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National Association of Certified Public Accountants

The C. P. A. Bulletin

No. 3 | The National Association of Certified Public Accountants | January 3, 1922
Wm. de LaRoche Anderson, Consulting Accountant, Acting Editor

SUPREME COURT RULES
In Far-Reaching Decision Against State Board

N. C. Board of Accountancy Forced to Rescind Action Against National Association Certified Members By Injunction and Court Ruling.

North Carolina Court Invalidates C. P. A. Certificates of Own State.

In behalf of the National Association of Certified Public Accountants and its certified members affected in the matter, two of the officers of the Association who had been certified by the Board of Accountancy of North Carolina obtained an injunction from the Superior Court of that State against this Board, which order reads in part as follows:

"The defendants and each of them, and their agents, employees and servants are restrained and enjoined from cancelling the certificate or license of plaintiff, and from making any order in the premises, or publishing or circulating any statement of or concerning the plaintiff as licensee of the said State Board of Accountancy of North Carolina. The defendants and each of them are further enjoined from holding any hearing upon the notice issued by them to plaintiff bearing date of November 5th, 1921."

This order, coupled with the decision of the Supreme Court of North Carolina, caused the State Board of Accountancy to rescind the curious resolution, printed elsewhere in the Bulletin, to announce the invalidity of their own Certificates and to return the $25.00 fees which had been paid therefor.

The most interesting court decision, to the profession of Accountancy, ever handed down, has just recently been rendered by the Supreme Court of North Carolina. The case at bar involved the question of the legal right of the State Board of Accountancy to act beyond the boundaries of the State in the matter of holding of examinations and rating of candidates for their qualifications for certification, as certified public accountants. In this case, which the court decided against the State Board and by which decision all certificates granted upon the ultra vires acts of the Board were invalidated, the court rather went out of its way to render an opinion of very broad scope and wide import to the profession for which the profession should be thankful for at last we have something in law to steer by.

(Continued in Various Other Columns

ALL ABOARD
If You're Going

The question which the National Association of Certified Public Accountants wishes to put squarely up to all Accountants at this time is—Is it not entirely desirable to hold the Certificate of the National Association which has back of it only the National Association's stand for the Americanization of the profession of accountancy by definite comprehensive National legislation and National license, and the aggregate reputation of the high grade professionals all over the country, who are its certified members, as well as to hold the local State certificates, which are founded only upon special local legislation and which have back of them only the action of the State Boards of Accountancy, which action, in certain instances, is or is not legal, dependent upon whether or not the quasi-judicial authority conferred upon these Boards has been delegated to some unofficial body, or whether or not they have acted beyond their jurisdiction, as laid down in the decision rendered by the Supreme Court of the State of North Carolina, and which decision has already invalidated and made worthless many Certificates issued by that State Board and has, at least, raised a doubt as to the validity of many Certificates issued by other State Boards. The National Association suggests that accountants read carefully the decision of the highest court in North Carolina and our analysis of the profession of today, all of which appears in full in this issue of the Bulletin, and then fill out and mail to us, with class of membership desired checked, the following blank form:

CUT THIS OUT AND SEND TO US

Kindly send me blank application form for (1) Ctfd. Membership; (2) Junior Membership in the National Association of Certified Public Accountants, Washington, D. C.

Signed .....
Address; Street.....
City .....
State .....

ANALYSIS OF THE PROFESSION OF ACCOUNTANCY

C. P. A. Total Accomplishment

In the last issue of the Bulletin, in the general analysis of the present value of C. P. A. in Accountancy, the National Association attempted to show the value of what has been accomplished by years of effort by those interested in the activity of the accountant and by their organizations in having legislation passed to enable a certain element in the profession to become possessed of this C. P. A. designation. This value, according to our analysis, sums up into a more or less meaningless designation, so far as real VALUE is concerned.

This C. P. A. activity on the part of the members of the profession, leaders, who have been supposed to lead professional thought, and guard professional welfare, seems to have been, and to be, the sum total of their legislative conception. We know of no attempt to conceive of, or present a policy and plan for the organization and advancement of the activity of the accountant as a profession. We know of no attempt to conceive of the value of the profession as a whole, or to visualize the meaning of the aggregate result of its activity and what that meaning would require, in the way of comprehensive legislative enactment and formal definition in law, in order to bring about a proper public comprehension, recognition and appreciation out of which would come an incalculable increase in professional employment, to the public advantage.

PROFESSION IGNORED

In a profession supposed to include capable analytical minds, trained to policy forming and organization creation and to the fundamental need of comprehensive visualization by the assemblage, comparison and valuation of components and factors forming the whole, it is extraordinary to realize that there has been no attempt to visualize the requirements of the profession to which these minds belong; to witness, in an activity, which in no sense can be properly confined within state boundaries, all activities of professionals centered upon the enactment of state laws; to witness, in an activity which has the widest public importance, every effort being centered upon the securement of special law, of the standardization of special law, for a limited, and minority element even, of the profession itself, and, still more extraordinary; to witness, as a sum total of legislative enactment, merely a system of grading of professionals, with no legislative enactments, or demands therefor, for the profession itself; to witness, THE PROFESSION OF ACCOUNTANCY ignored in the statutes of the various States and of the Nation.

PROFESSION FIRST

In the last issue of the Bulletin the National Association of Certified Public Accountants made plain its stand that, while it would do all possible for the public acknowledgment and appreciation of the degree of Certified Public Accountant, it stood first and foremost for the PROFESSION OF ACCOUNTANCY, AS A WHOLE, in that its conception of the "Value of the Profession" to the Public was, that without it, an intelligent regulation of public and private affairs, through a true knowledge of conditions, requirements, possessions and values, could not be obtained. The National Association in this issue of the Bulletin, after having gained attention by presenting first that which is really secondary in importance, merely because it is generally thought of first, namely, the value of "C. P. A. in Accountancy," will take up the fundamental and, so far, absolutely disregarded feature, the public (economic) value of the profession of accountancy, its current condition and professional position, under local C. P. A. legislation, the desirability of a comprehensive national definition, regulation and control, and the necessity of a comprehensive knowledge by the profession concerning the profession itself.

NATIONAL SCOPE

It is impossible to confine the results of the activities of the accountant within the confines of the state. An accountant making a report to a client in the Village of X, State of X, will reflect in his work beyond the client, beyond the village, beyond the state, and to the extent that the stockholders, debtors, creditors, bankers and others interested in the business of the client, may be distributed over the length and the breadth of the United States of America. The elements reflected in the books, records and accounts of nearly every business activity, no matter how small, are not confined in this present day of interstate business, within the boundaries of single states. The smallest merchant will buy his goods in numbers of states and his affairs, reflected in his accounts, will reflect and tie up with the affairs, through the accounts, of all of those with whom he does business. The accountant, in making his report, is reporting in effect, through the proprietor, to the debtors, creditors, stockholders and other interests connected and interested in the business, wherever they may be located, from the Atlantic to the Pacific, from Canada to the Gulf of Mexico, and beyond. The findings of the accountant in the village of X are taken up in the findings of the accountant in the city of Y, through the affairs of the second accountant's client who has business connections with the client of the accountant in the village of X, and his report in turn to his client reflects the work and the value of the first accountant, to the extent to which the two business organizations have dealings together, and the work of the original accountant is carried forward and reflected and re-reflected to all those who may be interested in the affairs of the business in the city of Y, and again carried forward, as reflecting in the accounts of other and wider business affairs, indefinitely, for good or for bad, according to the soundness and truth, or its lack, contained in the first report.

In our present-day, closely-welded, national business organization, the accountant's work, no matter where it may be done, or for whom it may be done, reflects in the whole. The accountant's value is a public value and cannot be a private value. The result of his work cannot be confined, and not only reflects in business but runs through local ordinance, state law to national law, and upon him rests intelligent and beneficent regulation of business, taxation and other matters subject to public enactment, if his work be sound and his report be true, or regulation which may do the greatest harm if founded upon information inaccurate, partial or erroneous. It would be far more reasonable to take the stand that bankruptcy should be a matter subject for state enactment and regulation, than to take the stand that the profession of accountancy may be adequately controlled, regulated or benefitted in the public or professional interest by state or other local legislation. In order that accountancy may be actually a profession, a profession in fact as well as in fancy, it will be necessary to have it defined, regulated and controlled by national law. In order that accountancy may be a profession, the accountant's first regard must be for the profession and not be for a degree or honor of that profession. The profession must first be legally established and legally acknowledged as a basis upon which to rate the standard for the degree of the profession, to prescribe the method of obtaining the degree and to set up rules and standards of professional ethics and practice. From the nature and effect of the activity and of its wide, general public importance, this can only be done effectively by national legislation.

YOUR OWN MEDICINE

If the accountants of the country were asked by a client, who was the proper officer in a controlling company of a group of corporations, to furnish statements showing the condition and the results of operations of 48 subsidiary corporations of the group, all of which were doing business, one with the other, and all with the parent corporation, and all of which being controlled by the parent corporation, the accountants of the country would not undertake to present separate reports on the individual companies nor would they undertake to investigate the companies as individual companies, but would rather regard them all as a group to be consolidated in order to obtain the true reflection of conditions and values. They would set up their consolidated schedules showing intercompany adjustments and eliminations and would in every way undertake to standardize and harmonize terms, methods and values on the common basis necessary to make the activities of all susceptible to one general report. This would be done because experience has taught that the holding company is the accounting catchall for the assembling of group values and the only medium through which group operation may be correctly reflected and observed.

If, instead of companies, the accountants of the country have a problem of their own, which involves their own profession, and in which problem there are 48 units of activity under 48 laws and 48 administrations controlled by a 49th activity and administration, all doing business one with another, why have they not the same problem, susceptible to the same treatment employed by them in business, to determine the value and result of the activity as a group, under its holding company. There are 48 states, under 48 laws, with 48 administrations, controlled by the holding company, the National Government, under the National Constitution. Why will not the experience of business, finance and accounts apply and indicate that consolidation is the only way which will furnish a true picture of policy, plan, organization and control? Why will not the method successfully developed by accountants and used by them in outside business—be a logical and a proper method for the accountants to apply to their own business? Do the accountants of the country prescribe medicine for all but themselves? Do they apply business methods to all but their own affairs?

CONSOLIDATED STATEMENT

The National Association feels that the question of group activity of almost any kind is susceptible of consolidated treatment, that the reflections and results will be true and good in all consolidated cases, and that the consolidated way is the only logical and common sense way, clearly recognizable to all accountants, to approach and determine the value and condition of the profession of accountancy in the 48 States of the Union under the National Government, in order to intelligently provide for, regulate and conduct the affairs of the profession as a whole.

AMERICAN INSTITUTE

Strange as it may seem there are still those, and not a few, high in the profession, who are advocating local legislation instead of national legislation—who are standing back of the value of State laws instead of advocating national laws—who are attempting an informal, private regulation and coordination of what should be a formal and public coordination and regulation; and who are still contending that the laws in force in the various States which merely establish a grade within the profession of accountancy, are all important and entirely adequate. When the profession at large witnesses the American Institute of Accountants urging the passage of a piece of local legislation for the District of Columbia, modeled after the local laws of the various States, and carrying in its provisions the same single purpose, namely, the conference of a title or degree to a certain minority element of the profession, and with nothing therein contained to provide for protection of the public or for the requirements of the profession, as a whole, it presents most clearly the fact that present leadership within the profession, has

failed to comprehend the tremendous advance which the profession has made in the public estimation, in the public use, and as an economic factor in the past five years. The passage of broad national legislation takes no more time or effort to have enacted than does the purely local legislation for the District of Columbia. Both houses of Congress must pass upon and the President of the United States must sign both. Inasmuch as the American Institute of Accountants is still advocating this local class of legislation, and has not evidenced a comprehension of general requirements by the advocacy of broad national legislation, apparently deeming its unofficial private co-ordinating influence to be sufficient and legal and that the public and the profession as a whole will accept such privately controlled service in lieu of the usual American custom of the delegation of authority by the people through their legislative and official channels to those whom it names to serve them, the National Association of Certified Public Accountants takes issue in this matter and presents the question upon the American plan.

NATIONAL ASSOCIATION

The National Association believes that the American custom should be followed in the profession of Accountancy along the lines that have been established for other important professions within the United States. It does not believe that any public interest is served in the enactment of local legislation for an activity which is nationwide, for an activity which is interstate, for an activity the result of which affects the whole people. The National Association believes that the so-called Capper Bill, which is being urged by the American Institute of Accountants, serves no good purpose in the public interest, in that it does not attempt to regulate an activity but merely seeks to confer a designation, that it does not serve the public interest because it is local legislation and not national legislation, that it confers authority with no responsibility, that it legislates in behalf of a small part and against a larger part of a profession, that it does not define the profession, that it creates a monopoly in control of a favored few which results in a less valuable professional service at a higher public cost, and that this form of legislation through the statutes of the various States, has proved to be undesirable and ineffective in the public interest, and has only served to hold back the development of the value of the profession and to curtail its uses by the public. The National Association does not believe that the American people or an American profession will accept a controlling influence other than that which is prescribed in the usual legal way, and that, in the event of the enactment of this Bill there would be merely another separate enactment which would require co-ordination with other similar legislation throughout the country, with no official controlling or co-ordinating influence provided for.

The National Association of Certified Public Accountants recommends that all those members of the profession of Accountancy who wish to see the profession actually made a profession with its practices adequately controlled in the public interest to the ultimate benefit of **all** of those engaged in public accounting, make themselves heard in the Halls of Congress in no uncertain way in behalf of adequate legislation in behalf of the people and the profession as a whole and opposed to the inadequate legislation represented in this bill, Senate No. **2531**; H. R. No. **8522.**

JUST FINDING ITSELF

No accountant will contend, who has given the matter thought, and who has been placed where he might have a broad general observation, but that Accountancy, in any but a very narrow sense, has become a profession, such as is worthy to be called the name, in a comparatively short period of time. In fact, the last four years, carrying with them a complicated general Income Tax Law, with the necessity of the determination, not only of the income of the nation but of the capital of the nation as well, has done more to make the profession real than all else preceding.

C. P. A. Laws have not done this, neither has it been the efforts, thought or direction of master minds within the profession, the fact is the profession, like Topsy, "just grew"—and "grew big." It is undoubtedly true that the profession has not yet found itself—but the profession has been found by the public. This is more or less appreciated in a hazy way. The professional boards, associations, societies and individual professionals know it, business and the public know it, we all know it—but what are we all doing? Nothing!, or, at least, as near nothing, as the continued effort to enact C. P. A. legislation or standardize and informally co-ordinate C. P. A. legislation is compared to the great big things which this big new national economic medium requires to be done.

FORGET THE PAST LOOK TO THE FUTURE

The National Association does not undertake to argue with or criticise the past, whether legislation was adequate or inadequate, be that as it may; whether or not leadership in the profession should have taken steps different from those which it did take, will not help now to do what is perfectly obvious should be done. It is lost time to consider the past at the sacrifice of the comprehension of the present and future; to enter into useless crimination and recrimination to the division of the force which must be united to accomplish now a plain professional duty to the profession. What the National Association will criticise and what the National Association will expose, will be those who fail to comprehend the profession of today, and the facts and conditions of today within the profession, and those who continue to attempt to apply conceptions, methods, customs and regulations more or less useful (or useless), in the past to a nebulous and generally unacknowledged profession, the value of which never generally rec-

ognized, to a profession, which, out of circumstance and economic evolution, has come to the rank of highest value, widest scope, and greatest public importance—a profession of wonderful possibilities for a wider and more general usefulness, and which, owing to the rapidity of its transition has yet to be defined, organized and regulated on the big new basis of its being.

NATIONAL DEMANDS

What the National Association demands is that there be a general comprehension within the profession of what the aggregate activity of the profession as a whole means; of what is the aggregate effect of the activity; of its value; of its importance; of its far-reachingness and of its unsusceptibility of confinement within national political sub-divisions: that there be a general realization of the necessity for general comprehensive legislation, not special legislation; that there be national legislation, not state legislation; that C. P. A. laws will not suffice and have not sufficed; that the profession has actually become a profession though not legally recognized; that C. P. A., as at present applied, represents not really the degree or license of a profession, but represents merely a decoration or honor to professionals; that C. P. A. should represent the professional degree; that as in law or any other recognized profession, all of those practicing professionals should hold the degree of their profession; that those without the degree should not be licensed to publicly practice; and, that there be, generally, the realization that the profession should standardize itself along the lines of other professions, which general American custom has set and approved for professional organization, plan, method, and procedure, modified during the period of standardization, to the extent that unfairness, injustice, narrowness and turmoil may be avoided.

BASIS OF VIEWS

In taking this stand the National Association lays no claim to all accounting knowledge nor to be above anyone else in ability or wisdom. The officers of the Association merely claim to have been in a position, as professionals—not political office holders, in the one place in all the whole country in which such a thing is possible, to observe the complete result of the aggregate effect of the activities of accountants all over this country, certified and uncertified. This position of observation is in the Income Tax Unit of The United States Government, where under the Income and Profits Tax Laws, statements and reports of all the business activities of the whole country, personal and organized, flow in, and where the results of the activities of the accountant in connection therewith, can be completely observed —a position from which, not only the activities flowing in to the Government can be observed but the attitude of the Government itself toward the profession of accountancy and its valuation of the accountant can be obtained. This opportunity, afforded the officers of the National Association for observation, together with the concensus of views, contributed to them as Officers of the National Association, by members, and by accountants generally throughout the whole country since the organization of the National Association, give them, as it would give any other accountant, the picture of the condition of the profession, which allows of no other reasonable stand than that taken by the National Association and presented in the columns of the Bulletin.

SAMPLE LETTER

Sample of letter the National Association is receiving from all over the country:

Mr. J. R. H. Hutchinson, Pres., National Association of Certified Public Accountants, Washington, D. C.

Dear Mr. Hutchinson:

I take this occasion to express my approval of many of the comments contained in Bulletin No. 2, particularly the statement regarding the unfairness of the present laws pertaining to C. P. A. license in the various states.

As pointed out, to obtain a C. P. A. license at the present time is practically beyond the reach of thousands of worthy accountants, in spite of the fact that they are thoroughly qualified in every respect to practice as licensed accountants. I am, therefore, very glad to see that the Association has taken a liberal attitude in this matter, both in regard to the type of the examination given and in other respects.

In view of the fact there are at the present so many different accountancy boards functioning in the different states, and the conflict arising between the board of one state and of that of another, it has occurred to me that you have now made a step in the right direction to place the Accountancy profession before the country in a proper light.

What is your opinion about having a bill introduced in Congress which will control the issuance of Federal licenses in place of the various state certificates?

In this way, it appears to me that the disgraceful conditions, now restricting a good many worthy accountants from assuming their proper places in the profession, will be done away with. I also agree with you that accountants as a body have been holding a very narrow view of the profession in so far as their belief that by restricting the number of certified public accountants to a favored few, that they can best benefit themselves. To me it seems that a better way to make the accountancy profession one of the foremost in the country is to open the doors to every person capable of practicing intelligently, and whose character, of course, will warrant such practice.

The proper remedy is not to restrict the number but to create a demand for the services of the professional accountant. This can be done only if accountants are more numerous and better organized so that they can carry on an educational campaign for the benefit of the business man and make him see the importance of the accountant in the light of a business advisor.

I am at present urging all my friends practicing accounting, whom I think worthy of membership, to send in their applications.

Very truly yours,

HERMAN TEADORE.

THE CURRENT CONDITION OF THE PROFESSION

There is no profession in the country today which approaches the Profession of Accountancy in the current existing condition of chaos, discord, disagreement and narrow-minded selfish objective within the profession. It is a painful thing to have to announce but the National Association feels that it is necessary. If the profession is to maintain its existence as a profession and if it expects to continue to command public respect, no matter how painful it may be, it is vitally necessary that the professional situation be visualized for what it actually is in order that those who are its members may come to their senses and to some constructive generally accepted and acceptable basis of understanding among themselves with which they may stand united before the public, not united by States, not united by Associations or Organizations, but united as a National profession. No organization, as full of internal strife and bickerings as is the profession of Accountancy, can hope to have the wide and important influence in the economic affairs of the nation that the profession of Accountancy should have while it is in its present condition of internal chaos. The principal common activity of the accountant, speaking in the general sense, is knocking other accountants, by States, by organizations and by individuals, which is WRONG—ALL WRONG. We are today the greatest advertising medium against ourselves that could be devised. We have lost all sight of the fact that a discredited accountant is a discredited accountant, whether he be of Maine or California, and that we all share, being accountants ourselves, in the lessened public regard for the accountant generally, which is the net outcome of the individual discredit. We sneer at accountants by States—we sneer at them by organizations, and we sneer at each other individually, and we wonder if the business world and the people sneer at us. There seems to be no way but our way, no standard but our standard, and that way and standard of ours can only be successfully attained by very few, and even those are not quite up to us. We have our standards in the clouds, each on his own cloud at that, but the trouble is there is no connection between cloud and cloud, nor from the clouds to the ground—and, unfortunately, we do our business on the ground. We must be practical—we can't go along with our heads in the air without a great big bump coming to us. This statement of condition is, we think, not overdrawn. We have Accountants held into court in New York City by other Accountants; we have meetings in Connecticut by the A. I. A. against the National Association; we have a lawsuit in North Carolina by North Carolina Accountants against North Carolina Accountants; we have the National Association taking out an injunction against the State Board of North Carolina; we have that board passing first a scurrilous resolution against the National and later being forced to rescind it; we have a court decision which invalidates many State Certificates and casts a cloud on many others; we have Accountants meeting in Chicago against Accountants elsewhere; we have Accountants' threats against Accountants almost from every State and against every State and private organization. Here at the National Capital where peace and the spirit of Christmas is in the air generally, there is no peace coming in from all the land to or for accountants. It is shocking to be in the position where all this discord registers. Something must be done if we, as Accountants, are to retain our self-respect and the respect of others, and the first thing to do is to realize the seriousness of the situation which the National Association attempts to show here and by other articles in the Bulletin; and then to make a professional New Year resolution that, while we have our own opinions and stand on them, yet we will fight for the profession as a profession, and for professionals as professionals, and in charity, justice and with open mind, realizing that we may be wrong and others may be right, approach and thrash out professional questions, not in a spirit of animosity, as individuals, but as integral parts of a whole, on the welfare of which is dependent the welfare or all individually.

NORTH CAROLINA SQUABBLE

This Kind of Thing, of Course, Breeds Public Confidence in Accountants.

As we know of no steps taken by the State Board of Accountancy of North Carolina to publicly announce the wrong committed by it against the National Association of Certified Public Accountants and its certified members, the National Association is forced, in order that the members of the profession may know the truth in this case, to state here that the State Board of North Carolina was forced to rescind the scurrilous resolution recently passed by it and directed against the National Association, and those holding the Certificates of the Association, who were also holders of Certificates of North Carolina, or any other State, by an injunction secured against it by the National Association and by the action of the Supreme Court of the Board's own State, which declared, in effect, that, (the State Board having previously proclaimed that the National Association's certificate was worthless and delusive), the Certificates issued by the State Board itself, in the name of the sovereign State of North Carolina, on its Washington examinations, were not only worthless and delusive, but absolutely invalid.

WE HATE TO FIGHT

The National Association is not at all pleased that it has had to take this action—it likes to feel that, while it may have differences in opinion with State Boards or any others in the profession, as to the best procedure for the best interests of the profession, it can iron out these differences in a dignified way, as professional to professional, without any quarrel whatsoever, in court or otherwise, and it only hopes that it may not be again forced to such a course in the future.

RESCINDED RESOLUTION

(An instructive resolution passed and rescinded by the State Board whose certificates actually were delusive and worthless, being declared invalid on an adverse decision of the Supreme Court of North Carolina.)

Passed by North Carolina State Board of Accountancy, at Meeting, November 5, 1921

WHEREAS: Congress has not as yet enacted a Certified Public Accountant Law for the District of Columbia, such as has been adopted by each of all the States of the Union; and

WHEREAS: There appears to be no Laws, either Federal or State, that forbid any resident of the District of Columbia from calling himself a Certified Public Accountant, whether or not he is an Accountant; nor does there appear to be any District Law that directly forbids any person, firm, association, or corporation from engaging in the business of issuing the Degree of Certified Public Accountant, or any other Degree; and

WHEREAS: The investigation made by this Board has disclosed that there is a Private Corporation, which has been recently incorporated under the laws of the District of Columbia, located in Washington, D. C., known as "The National Association of Certified Public Accountants," whose purpose, according to the third paragraph of its Charter, is to issue the Degree of Certified Public Accountant; and

WHEREAS: The said private Corporation appears to be now engaged in the business of issuing Degrees of Certified Public Accountant, for the sum of Ten Dollars ($10.00) each; and it further appears that said private Corporation is extensively advertising and soliciting customers by presenting —among other things—a claim that it has a "waiver" clause, under which a person may procure his or her Degree without examination; Be it therefore

RESOLVED: That it is the unanimous opinion of the North Carolina State Board of Accountancy, from the information now before it, that the private Corporation known as "The National Association of Certified Public Accountants," Washington, D. C., is engaged in the practice or business of issuing or granting Degrees of Certified Public Accountant; that it is further the opinion of this Board that the said private Corporation is operating in this respect without authority from either Federal or State Laws, other than what is given under the general private Corporation Laws of the District of Columbia; Be it further

RESOLVED: That the Certificates that said private Corporation has granted and is issuing, purporting to be Degrees of Certified Public Accountant, are in our opinion, delusive and worthless; Be it further

RESOLVED: That it is the unanimous opinion of the North Carolina State Board of Accountancy that any person who holds an unrevoked Certificate as Certified Public Accountant under the Laws of the State of North Carolina, or any other State, and who is aiding or abetting the business or practice of the said "National Association of Certified Public Accountants;" Washington, D. C., by being connected with said corporation, either as an officer or member thereof, or as a holder of one of their certificates of "Certified Public Accountant," constitutes an offense in professional ethics sufficient for revoking his or her certificate granted under the laws of this or any other State; and be it further

RESOLVED: That the Secretary of this Board is hereby instructed to notify legally each and every officer and member of the said "National Association of Certified Public Accountants," who holds a certified public accountant's certificate granted by the North Carolina State Board of Accountancy, to appear before this board, Saturday, December 10, 1921, at the office of Major J. J. Bernard, Secretary, in the Wake County Courthouse, Raleigh, N. C., to show cause why his or her certificate should not be revoked, in accordance with Section 7022 of Chapter 110 of the Consolidated Statutes of North Carolina.

J. J. BERNARD,
Secretary.

THE NEW YORK SQUABBLE

The following is a copy of a brief filed in a magistrate's court. The case at bar brings a C. P. A. (N. Y.) vs. "C. P. A.'s" (N. H.), another fine exhibition for the public, inspiring general respect for and confidence in the profession:

In the Matter of the Complaint of
H. ELY GOLDSMITH
—Against—
VARIOUS DEFENDANTS
For Violation of Section 80 of the General Business Law.
Brief Submitted by
SIMON M. PLATT
as Amici Curae of the Court.

POINT I

Public Accountancy has not been created a profession. There is no prohibition against the practice of accountancy by individuals, even though they have not received a C. P. A. degree. Differentiating this act from the act prohibiting the practice by an individual citizen from practicing law, medicine, dentistry and kindred professions.

This section to wit: Section 80 of the General Business Law is similar to the law creating the title of R. A. to wit: Registered Architect.

That act, the creation of the title of R. A., did not and does not prohibit a man from practicing the profession of architect in the State of New York, nor does it limit it just to those who have received the degree of R. A.

POINT II

The act itself to wit: Section 80 of the General Business Law, recognizes the fact that the sister states of the United States of America have created C. P. A. degrees or designations. As a matter of fact, every state of the

United States has created C. P. A. Degrees, regulations and standards.

The custom of reciprocity is given due consideration in this act by making provisions for the granting of a C. P. A. degree in this State to one who has received such a degree from a sister State. The intent of the legislature clearly was not to prohibit C. P. A.'s of other States from practicing in New York as many of our C. P. A.'s have national activities and such a course might invite retaliation.

POINT III

The defendant at bar has not contravened section 80 of the General Business Law because of the fact that the said defendant has held himself forth as a C. P. A. (NH) which is clearly an indication that he is a certified public accountant of the State of New Hampshire and which is a clear indication that he does not hold himself out or represent himself to be a C. P. A. of the State of New York, nor did he hold himself out or represent himself to have received a C. P. A. degree from the Regents of the University of the State of New York.

The act only prohibits the using of the words C. P. A. or other words, letters or figures to indicate that the person using the same is a certified public accountant who has received a degree from the Regents of the University of the State of New York.

POINT IV

There is nothing contained in the said section 80 of the General Business Law that prohibits a person from holding himself out or representing himself to be a C. P. A. of the State of N. H. or any other State or using the abbreviation C. P. A. (NH) or C. P. A. designating any other State after such initials and there is no prohibition against an individual practicing accountancy under any designation whatsoever excepting that unqualified designation specified in this act to wit: C. P. A. or certified public accountant.

Respectfully submitted,

SIMON M. PLATT, Attorney,

City and Post Office Address:
908 Brook Avenue,
Bronx, New York City.

COURT DECISION COMMENT

Very interesting questions, vitally important to the Accountants concerned, have been raised by the decision recently rendered by the Supreme Court in North Carolina, which is carried in this issue of the Bulletin. Among them is the question as to the legality of the acts of various State Boards in issuing Certificates to Accountants on examination outside of the boundaries of the various States and the question of the validity of the actions of the various Boards based upon their relationship with the American Institute of Accountants in the matter of giving examinations and rating papers which amounts to the judgment of qualifications, after the examination has been given. The National Association has not yet gone into these questions deeply enough to render an intelligent opinion on this matter and is merely calling attention at this time to possibilities under the decision that may be very serious, in what the Court says, bearing on this subject, as follows:

"It is an established rule that when the means for the exercise of a granted power are given, no other or different means can be implied, as being more effective or convenient." * * * "And the duties pertaining to the office cannot be delegated to others." * * * "The conclusion is inevitable that the field for the discharge of the functions of the State Board of Accountancy is not the whole world, but only 'Such places within the State as the Board may designate'" * * * "The law is unmistakably clear that the legislature has no power to enact statutes, even though in general words, that can extend in their operation and effect beyond the territory of the sovereignty from which the statute emanates. The legislative authority of every State must spend its force within the territorial limits of the State."

It will be noted that the question as to the character of legislation, which C. P. A. legislation generally represents, was not developed in the North Carolina case. As both the defendant and the plaintiff happened to be in agreement upon this point and set forth that this legislation was not special legislation but was in the general public interest, the court apparently accepted the matter in this light, no issue in this respect being raised in the case, and assumed that the State had acted in the lawful exercise of its police power "to safeguard the public against incompetent accountants." (Note that the court uses the word accountants, not certified public accountants, which would appear to indicate that court had in mind that all accountants, practicing publicly, were certified under the act), it apparently being beyond any reasonable conception of the court (and rightfully) that any other condition could exist and that the public was absolutely unprotected from the "accountant" by this law in that an overwhelming majority of accountants, practicing publicly, did not come under the restrictions of this kind of law at all but were practicing freely and uncontrolled The court simply could not visualize the police power, to use an extreme illustration, being used, merely to certify honest men, as such, and to allow the burglar to operate uncontrolled.

EXAMINATIONS

The National Association held examinations in Chicago, on Thursday and Friday, December 8th and 9th; and in New York, on December 15th and 16th. These examinations were very well attended and successful in every respect. Not a figure was used in any of the examinations thereby illustrating the National Association's viewpoint of the difference between the Accountant and the Comptometer, Bookkeeper, Junior Accountant, Statistician, and Actuary and showing that the Accountant's particular function is the dealing with accounts and items in accounts and with other records to detect the truth, leaving to others less skilled in accounts and of more mechanical function to denominate the degree of truth by placing thereupon the numerical value. A copy of the Chicago examination will be enclosed with this

copy of the Bulletin as it will be interesting to accountants, not especially from the standpoint of the problem, which is merely a double consolidation, but as to the form in which the problem is presented, which leaves everything to the analytical ability of the examinee, his power of deduction based upon relative values as shown by accounts and deficiencies of accounts and, generally, his power to read correctly the story of business as shown in the language of the accountant.

"C. P. A." Law

Note—Salient features of decision have been printed in capitals.

IN THE SUPREME COURT OF NORTH CAROLINA, FALL TERM, 1921

State on the relation of the Attorney General and D. H. McCullough,

v.

George G. Scott and others, constituting the State Board of Accountancy.

No. 443, Mecklenburg

Appeal from Mecklenburg—Ray J., presiding.

This action was brought by the plaintiff, who is a duly certified Public Accountant, to enjoin the defendants from exercising certain of their duties beyond the limits of the State, and, to be more exact, from examining applicants for licenses and certificates to practice, as Public Accountants, beyond the State and in the City of Washington, D. C.

The case was tried below on demurrer to the complaint and the motion to vacate a restraining order theretofore granted. The court sustained the demurrer and vacated the restraining order, and refused a preliminary injunction to the final hearing. Plaintiff appealed.

COCHRAN & BEAM and CARRIE L. McLEAN, for Plaintiff.

E. R. PRESTON and JAMES A. LOCKHARD, for Defendant.

WALKER, J. (after stating the case):

The State Board of Accountancy was created by special act of the Legislature of 1913, the act being Chapter 157 of the Public Laws of 1913, brought forward in the Consolidated Statutes as Chapter 116, sections 7008 to 7024, inclusive. The function of this Board is to examine applicants and grant certificates, as Certified Public Accountants of the State of North Carolina, to those giving evidence by such examination that they are qualified. The statute provides (C. S. 7010) that: "The Board shall determine the qualifications of persons applying for certificates under this chapter, and make rules for the examination of applicants and the issue of certificates herein provided." The statute further provides (C. S. 7016): "The examination shall be held as often as may be necessary in the opinion of the board, and at such times and places as it may designate, but not less frequently than in each calendar year."

Before entering upon a discussion of the merits, we will first consider a preliminary question based upon the motion of the plaintiff in this Court to make the Attorney General a party as co-plaintiff, so that the title of the case shall be "The State on the relation of the Attorney General and D. H. McCullough," as plaintiffs, against the present defendants. The defendants resist the granting of this motion on the ground that the amendment here will deprive them of the benefit of their second ground of demurrer taken below, that plaintiff had no right to bring this action and that this Court will not allow an amendment, when such a result will follow. This is true generally as the cases cited by the defendants show. West v. Railway, 140 N. C., 620; Bonner v. Stotesbury, 139 N. C., 3; Wilson v. Pearson, 102 N. C., 290; Grant v. Rogers, 94 N. C., 755. And they further contend, that it would substitute a new cause of action. If we could see that such would be the result, and that defendants would be prejudiced thereby, we might deny the motion, but it does not so appear to us. The plaintiff has some interest in the cause of action, as a member of the class for whose benefit this law was enacted, and is subject to the general supervision of its Board and its official bodies, and also he has such interest as a citizen and taxpayer, in seeing that funds, in which the public have an interest, should not be diverted to an illegal purpose, or squandered for unauthorized purposes, and more especially he has an interest in requiring that funds raised for the support of this quasi public body, they being trustees of the class of which he is a member, should not be unlawfully expended by the Board, but should be held by it to subserve the special objects for which it was created. But, however this may be, and it is not necessary that we should definitely decide it, this Court has allowed the amendments requested, which are in the interest of a hearing of the case upon its real merits, and in accordance with, at least, one of our former decisions, when a similar amendment was ordered here. Forte v. Boone, 114 N. C., 176 (op. by the present Chief Justice). There it was held, as the syllabus of the case shows, that where an action was brought on the official bond of a clerk of the Superior Court in the name of the parties injured by a breach thereof, it was not error in the Court below to permit an amendment of the summons by the insertion of the words "The State on relation of" after the pleadings were filed. The court, in the opinion, says with respect to this holding: "We may note, however, that the exception to the Judge's allowing the summons to be amended by adding the words "State on relation of" before the name of plaintiff, was not error. Maggett v. Roberts, 108 N. C., 174. It might have even been allowed after verdict (Brown v. Mitchell, 102 N. C., 347), or, indeed, IN THIS COURT," citing Hodge v. Railroad, 108 N. C., 24, 26; Grant v. Rogers, 94 N. C., 755; Tyrrell v. Simmons, 48 N. C., 187; The Code, sec. 965.

We then have a case, in the name of the State upon the relation of its At-

torney General and D. H. McCullough against the defendants, to enjoin the violation by the latter of the law creating them, wherein it is alleged that they have committed an ultra vires act, and to the extent that, if they may pay their expenses in the doing of the alleged unlawful act, they will misapply the trust fund established by the statute for the lawful costs and expenses of the Board, and thereby are diminishing the amount which should go into the public treasury by the terms of the law, which provides in Consol, Statutes, sec. 7019, that after paying expenses, "any surplus arising shall, at the end of each year, be deposited by the treasurer of the board with the state treasurer to the credit of the general fund." The Consol. Statutes, sec. 1143, entitled "Actions by the Attorney General to prevent ultra vires acts by corporations," provides:

In the following cases the attorney general may, in the name of the State, upon his own information or upon the complaint of a private party, bring an action against the offending parties for the purpose of:

1. Restraining by injunction a corporation from assuming or exercising any franchise or transacting any business not allowed by its charter.

2. Restraining any person from exercising corporate franchises not granted.

3. Bringing directors, managers, and officers of a corporation, or the trustees of funds given for a public or charitable purpose, to an account for the management and disposition of the property confided to their care.

4. Removing such officers or trustees upon proof of gross misconduct.

5. Securing, for the benefit of all interested, the said property or funds.

6. Setting aside and restraining improper alienations of the said property or funds.

7. Generally compelling the faithful performance of duty and preventing all fraudulent practices, embezzlement, and waste.

To restrain corporations from ultra vires acts, and which was applicable where purpose was not to dissolve corporation, as under section 1187, but to preserve it in its useful functions without abuse of powers. Attorney General v. R. R., 28 N. C., 456. This section embodies provisions of Rev. Code, Chapter 26, section 28; Rev. Statutes Ch. 26, sec. 10; Acts of 1831, Ch. 24, sec. 5, which authorized injunction proceedings in a court of equity.

The authority, given by the statute, as approved by this court, would seem to be ample justification for granting the relief prayed for by plaintiff in this action. The Attorney General is doing only what the statute permits him to do in the interest of the public, of his own motion, or upon the complaint of a private party.

Having disposed of this preliminary question, we proceed to consider the case upon its merits. It must be steadily kept in mind that we are now dealing with an overruled demurrer, and we can consider only the facts alleged in the complaint (which are to be taken as admitted), and no extraneous matter. Hartsfield v. Bryan, 177 N. C., 166; Brewer v. Wynne, 154 N. C., 467; Wood v. Kincaid, 144 N. C., 393.

We are firmly convinced that the statute, under which the defendants professed to hold this examination, does not authorize them to perform their duties, and exercise their functions, outside the State, and that, on the contrary, it requires them to confine their activities strictly within its limits. We do not suppose, for an instant, it will be controverted, that defendants are public officers. The board created by the Act is, at least, a quasi-public corporation, required to discharge certain public duties, and responsibilities to the State and bound for their proper, and legal performance, and also for the care and administration of the funds they handle, the surplus of which, not used for defraying the Board's expenses, being required to be deposited in the State Treasury. In Groves v. Barden, 169 N. C., 8, our Court defines the word "officers," and refers with approval to the case of Attorney General v. Tillinghast, 17 A. & E. Annotated Cases, 452. These cases, with the authorities therein collected, and the later authorities given in the notes to Groves v. Barden in Ann. Cas. 1917 D, p. 316, furnish us the indicia by which we determine whether a given position is or is not an "office." Applying to the State Board of Accountancy the tests laid down in the cases, we find that the Board was directly created by the Legislature; the qualifications of its members are prescribed by law—all to be residents of the State, three to be actively engaged as Certified Public Accountants of this State, one to be a lawyer of the State in good standing; the treasurer is required to give bond; the funds belong to the State after the expenses of the office are paid; there is entrusted to this Board some of the sovereign authority of the State, it being an arm of the State Government; the duties are not merely clerical, or those of agents or servants, but are performed in the execution and administration of the law, in the exercise of power and authority bestowed by the law; they are appointed by the Governor; the people of the State at large are concerned in the performance of their official acts; their compensation is derived from fees fixed by law; they are not under contract with the State, either as to their duties or their compensation; the law fixes the duration of their term of office; such discretionary power is granted and such judgment required in the exercise of the functions for which the Board WAS CREATED AS TO RENDER THE OFFICIAL ACTS OF ITS MEMBERS QUASI-JUDICIAL; the duties are continuing in their nature,—i. e., they are to be regularly performed; AND THE DUTIES PERTAINING TO THE OFFICE CANNOT BE DELEGATED TO OTHERS. The certificates granted by the Board constitute a license to practice as Certified Public Accountants within the State. The position held by each of the defendants complies with all the tests prescribed in State Ex. Rel. Attorney General v. Noland Knight, 169 N. C., 333.

In 22 R. C. L. 396, boards of education, boards of legal examiners, and boards of equalization of taxes, are mentioned as among various well known instances of boards of public officers. It is admitted that the jurisdiction of the Board is statewide, and if the members are officers, they are, therefore, State Officers. The plaintiff contends, and it is true, that the jurisdiction of State officers is only co-extensive with the territory of the State from which they derive their powers. "It is apparent that in strictness a mere license or power conferred by statute is only co-extensive with the sovereignty from which the license or power emanates." 17 R. C. L. 502. "State officers are those whose duties concern the State at large, or the general public, although exercised within defined limits, and to whom are delegated the exercise of a portion of the sovereign power of the State. They are in a general sense those whose powers and duties are co-extensive with the State," 36 Cyc., 852. In State v. Hocker, 63 Am. Rep., 174, after reciting very fully the attributes necessary to constitute an officer, it was held that without any semblance of doubt the members of the board of legal examiners were State officers, the field for the exercise of whose jurisdiction, duties and powers, was co-extensive only with the limits of the State.

It cannot be said that "co-extensive with State Boundaries" means more than the words imply, that is so contradictory that the mere statement of it is seemingly absurd. The word "jurisdiction" embraces not only the subject matter coming within the powers of officials, but also the territory within which the powers are to be exercised. (State v. Magney (Neb.), 72 N. W., 1006, 1008). The question as to jurisdiction must be considered with reference to the territory within which it is to be exercised. (Konold v. Rio Grande W. Ry. Co. (Utah), 51 Pac. 256). Jurisdiction is defined to be the "power to hear and determine causes." The hearing is as important a part of jurisdiction as the determining. The power of officials to act as fixed and limited by the place of performance, is discussed in the case of State v. Dolan, 72 Miss., 960, 18 So., 387, and particularly in the notes to the same case in 33 L. R. A., 85. While it is true that in most of the cases referred to in these notes some place for performance was designated in the statute, still in the case of Ex parte Branch, 63 Ala., 383, cited in this connection, it is said: "If the law should not, however, appoint a place for the sitting of the Court, it would doubtless rest in the power of the judge to appoint the time and place of the sitting; and the only limitation of the power would be, that the place should be within the territory of his jurisdiction." In Ferebee v. Hinton, 102 N. C., 99, the Clerk of the Court of Camden County, North Carolina, went to Virginia, and took the examination and acknowledgement of the parties to a deed of trust on land in North Carolina, but did not write out his certificate and sign it until he returned to Camden County, North Carolina. The Court said: That the deed was void as to the wife, if the Clerk of the Superior Court of Camden County took her privy examination in the State of Virginia cannot be denied, and it is unnecessary to cite authority in support of such a plain proposition as to the admissibility of the evidence; as to the other point, it is equally clear that the Clerk had no jurisdiction when he took the privy examination in the State of Virginia." This case is cited with approval in Long v. Crews, 113 N. C., 256, in which the present Chief Justice wrote the opinion, and in which he says: "In this State it is settled law that an acknowledgement of a deed by the husband and privy examination of the wife taken before a Justice of the Peace, Commissioner, or Notary, is a judicial, or at least, a quasi-judicial act, and if such officer is not authorized to take it, the probate and registration are invalid against creditors and purchasers. * * * The principle has since been followed in Todd v. Outlaw, 79 N. C., 235; Duke v. Markham, 105 N. C., 131, and many other cases. * * * These were all cases where the registration and probate were insufficient because the acknowledgement was made before an officer, by reason of his locality, not authorized or acting outside of his local jurisdiction, and the ruling is sutained by ample authority elsewhere, 1 Am. & Eng. Enc., 146, note 2, and 1 Devlin on Deeds, Secs. 487 and 488, with cases cited. * * * The acknowledgement is taken, so to speak, CORAM NON JUDICE, and cannot authorize probate by the clerk and registration," citing authorities. Acts of a school officer must generally be performed at the times and places designated by law, or they will be invalid; and, generally speaking, they must be performed within the territory over which the officer's jurisdiction extends; 24 R. C. L. 578.

In Pardrige v. Morgenthau, 157 Ill., 395, the judge out of court and off the bench approved an appeal bond, and directed it to be filed NUNC PRO TUNC, and it was decided to be invalid. In Bear v. Cohen, 65 N. C., 511, it was held that a Judge appointed by the Governor to hold court in Wilson and Craven Counties, did not have jurisdiction to act in cases pending in other counties of the district—specifically, to set aside an attachment in Wayne County. In State v. Jefferson, 76 N. C., 309, the Judge left the Court in Warren County before the jury agreed on a verdict, and went to his home in the adjoining county of Franklin, where he was advised by telegraph that the jury could not agree. He instructed the Clerk by wire to discharge the jury and remand the prisoner. Discussing error in the exercise of power by the Court (the validity of his act as affected by the place of its performance), it was held to be the duty of the Judge that he should be personally present in Court, and therefore his act was illegal, and the prisoner was entitled to his discharge. When in 1913 our legislature enacted a curative statute validating probates and acknowledgements taken prior to 1913 by officers out of the county, or dis-

trict, authorized by law, only such probates or acknowledgments were validated as had been taken within the State. Laws 1913, Ch. 125, C. S. 3336. In Re Allison, 13 Colo. 525, 10 L. R. A., 790, it was said that "no issue was made with the definition usually given that a Court consists of persons officially assembled under authority of law, at the appropriate time and place for the administration of justice, nor was it denied that the place of meeting was an important element in the definition."

It is elementary that when the law confers upon a person powers that he as a natural person does not possess, power cannot accompany his person beyond the bounds of the sovereignty which has conferred the power. For example, letters testamentary or of administration have no legal effect beyond the territorial limits of the State in which they are granted. An executor or administrator cannot sue in his official capacity in the courts of any other State than that from which he derives his authority to act in virtue of the letters there granted to him, because his appointment stops at the boundary of the State which appointed him, 11 R. C. L., pp. 432-447. He must resort to ancillary administration in the other State. A State may have extra territorial officers, such as commissioners to take acknowledgments of deed in other States and territories, but such cases are clearly exceptional, 22 R. C. L., 405. The same familiar principle that forbids court officials, executors, administrators and guardians from acting in their official capacity beyond the State boundaries, is applied in the case of corporations. In the case of Miller v. Ewen, 27 Maine, 509, 46 Am. Dec., 619, it was held that a general clause in a charter authorizing certain persons to call the first meeting of a corporation at such time and place as they think proper, does not authorize them to call the meeting at a place without the State. Numerous cases may be cited to establish the general principle that meetings of corporations for the performance of corporate acts must be held within the State creating the corporation, 14 Cor. Jur., 886 and 7 R. C. D., 335. Our own State has enacted this principle into the statute, i. e., that meetings of stockholders must be held within the State. The reason given for this rule is that in the performance of corporate acts, the corporation shall be at all times under the supervision and control of the laws of the State creating the corporation. If this be true of private corporations, A FORTIORI is it true of an army of the State government, a body corporate to whom has been entrusted the performance of a governmental duty designated to protect the people of the State against unskilled and incompetent persons in a profession for which the State has seen fit to fix standards of proficiency before admission to practice.

As has been said, "jurisdiction" involves the hearing as well as the determining of matters to be decided—indeed, the hearing of the matter is the basis for the determination. The giving of examinations for determining the the qualifications of applicants is not a mere incidental or ministerial duty such as might be delegated by the State Board of Accountancy to other persons, but is a judicial or quasi-judicial duty required to be performed by the members of the Board themselves, and in order further to safeguard the public, certain standards of skill are required of the examiners. The plaintiff contends that the submission and the supervision of the holding of the examination, and the determination of the qualifications of applicants, constitute one official act, requiring such judgment and discretion as to render it judicial or quasi-judicial in character; that it is the performing of a function of government designed to benefit the people of the State; and therefore, in going beyond the boundaries of the State to perform this function, the Board would exceed its jurisdiction. It seems superfluous to cite other authorities than those already citd from our own court in Ferebee v. Hinton, 102 N. C., 99, and in Long v. Crews, 113 N. C., 256, either as to the judicial character of the official acts of the Board of Accountancy, or as to the place where these acts may be performed. The comparatively simple act of taking the acknowledgments and examination of grantors in a deed, by a Notary, Commissioner, Justice of the Peace, or Clerk, has been repeatedly held by this Court, to be judicial, not only in the cases cited above, but in State v. Knight, 169 N. C., 333; Paul v. Carpenter, 70 N. C., 508; White v. Conelly, 105 N. C., 68; Piland v. Taylor, 113 N. C., 1, and others.

Bishop on Non-Contract Laws, sec. 785, 786, says, that quasi-judicial functions are those which lie midway between the judicial and the ministerial ones. The lines, separating them from such as are on their two sides, are necessarily indistinct but in general terms, when the law, in words or by implication, commits to any officer the duty of looking into facts, and acting upon them, not in a way which it specifically directs, but after a discretion in its nature judicial, the function is termed quasi-judicial. In 18 R. C. L. 294, in discussing the extent to which a board of examiners may be controlled in granting professional licenses, the discretionary power to pass on qualifications is termed "judicial," and in every case where the acts complained of constituted an abuse of discretion or an excess of jurisdiction, it is held that the courts should intervene to enforce or enjoin, as the circumstances might be. In 22 R. C. L., 383, it is said, that certain officers are considered quasi-judicial, as for example, members of a board of pilot commissioners, to whom the law has entrusted certain duties, the performance of which requires the exercise of judgment. In Bonar v. Adams, Auditor, and Jenkins, Treasurer, 65 N. C., 639, it was held that the State Auditor is not a mere ministerial officer, but exercises discretionary powers. It was held in Ex Parte Garland, 4 Wall. (U. S.) 333, at 378, that the admission and exclusion of attorneys is the exercise of judicial power, and had been so held in numerous cases at

that time. This has been approved in numerous later decisions referred to in Rose's Notes, Vol. 6, p. 55. In Troop on Public Officers, pp. 507 et seq., it is said, that although an officer may not in strictness be a judge, still, if his powers are discretionary, to be exerted or withheld according to his own view of what is necessary and proper, they are in their nature judicial. Where a power rests in judgment or discretion, so that it is of a judicial nature or character, but does not involve the exercise of the functions of a judge, or is conferred upon an officer other than a judicial officer, the expression used is generally "quasi-judicial." It is a general and sound principle, that when ever the law vests any person with a power to do an act, and constitutes him a judge of the evidence on which the act may be done; and, at the same time, contemplates that the act is to be carried into effect through the instrumentality of agents; the person thus clothed with power is invested with discretion, and is QUOAD HOC a judge. BY JUDICIAL ACTION IS MEANT, IN LEGAL UNDERSTANDING, THAT WHICH REQUIRES THE EXERCISE OF JUDGMENT OR DISCRETION BY ONE OR MORE PERSONS, OR BY A CORPORATE BODY, WHEN ACTING AS PUBLIC OFFICERS, IN AN OFFICIAL CHARACTER, AS SHALL SEEM TO THEM TO BE EQUITABLE AND JUST.

In State v. State Medical Examining Boa-d, 50 Am. Rep. (32) (Minn.) 575; in People v. Dental Examiners, 110 Ill., 180; in State v. Gregory, 83 Mo., 123, 53 Am. Rep. 565; in Williams v. Dental Examiners (Tenn.) 27 S. W., 1019; and many similar cases, it was held that examining boards for physicians, dentists, lawyers, and other professions, exercise judicial or quasi-judicial powers; and in all other cases, the courts addressed themselves largely TO DETERMINING WHETHER THE ACT COMPLAINED OF WAS WITHIN OR IN EXCESS, OR ABUSE, OF SUCH POWERS; IF THE LATTER, IT COULD BE ENJOINED OR ENFORCED BY THE COURTS. In the much-cited case of State v. Chittendon (Wis.), 107 N. W., 500, at 516, it is said that the law leaves the matter (decision as to status of the college) to the board, acting reasonably, the same as similar matters are commonly left to such agencies exercising quasi-judicial authority. It contemplates that the members fo the board will proceed with the dignity and fairness commonly expected of tribunals exercising judicial or quasi-judicial authority; that they will act as a body; that they will act upon proof of some sort reasonably appropriate to the case and made a matter of record, not necessarily that they will, in all cases, act regardless of personal investigation, but that in case of reliance thereon the result of the investigation will be made a matter of record. . . . . In short, that they will exercise their judicial function judiciously and that their decisions will be open to review by the courts for jurisdictional error.

The general rule for the construction of staeutes, when applied to the law under consideration, clearly indicate that the intention of the legislature, and the object to be secured by the performance of the duties presented for the Board of Accountancy, require that the words "at such places as it may designate," shall be construed to mean "AT SUCH PLACES WITHIN THE STATE AS IT MAY DESIGNATE." In construing a statute, it is to be considered in its relation to other law, as part of a general and uniform system of jurisprudence, in connection with other statutes on the same or cognate subjects, or even on different subjects. Where the language is of doubtful meaning, or adherence to the strict letter would lead to injustice, the Court gives a reasonable construction consistent with the general principles of law. The spirit, or reason of the law, prevails over its letter. The meaning of general terms may be restrained by the evident object or purpose to be attained, and general language may be construed to admit implied exceptions, in order to accomplish what was manifestly intended. It is proper to consider the occasion and the necessity for its enactment, and that construction should be given which is best calculated to advance the object by suppressing the mischief and securing the benefits contemplated. If the purpose, and well ascertained object of a statute, are inconsistent with the exact words, the latter must yield to the controlling influence of the legislative will resulting from a consideration of the whole act. A statute should not be extended beyond the fair and reasonable meaning of its terms because the legislature did not use proper words to express its meaning. Where the ordinary interpretation of a statute leads to consequences so dangerous and absurd that they could never have been intended, the Court, may adopt a construction from analogous provisions and thus supply an omission. Abernathy v. Commissioners, 169 N. C., 631.

The above is a summary of some of the general principles for the construction of statutes as laid down in 36 Cyc. 1102 et seq., and many decisions, and when applied to the statute under consideration in the case at bar, THE CONCLUSION IS INEVITABLE THAT THE FIELD FOR THE DISCHARGE OF THE FUNCTIONS OF THE STATE BOARD OF ACCOUNTANCY IS NOT THE WHOLE WORLD, BUT ONLY "SUCH PLACES WITHIN THE STATE AS THE BOARD MAY DESIGNATE." In State v. Ind. Co. (Ark.) L. R. A., 348, in construing a statute in which the word "any" occurred thirteen times in the first section, the Court held that, although the legislature may use generally words such as "any" or "all," in describing the persons or acts to which the statute applies, still it does not follow that the law has any extra territorial effect; for it is presumed that the legislature did not presume it to have such an extensive, or world-wide effect, unless the language of the statute admits of no other reasonable interpretation. Bond v. Jay, 7 Cranch 351. The reports fur-

nish numerous instances of the application of this rule, by which general words used in statutes are taken as limited to cases within the jurisdiction of the legislature passing the statute, and confining its operation to matters affecting persons and property in such jurisdiction. If it were necessary, hundreds of cases and statutes could be referred to containing general words, which are thus limited. Among the vast number of cases construing such statutes, it is doubtful if one can be found in which such general words have not been treated as limited to some extent, for it is unusual for a legislature to intend that its statutes shall apply everywhere.

We have already referred to the law of corporations as being a law on a cognate subject. Even more closely allied is our law as it relates to such professions as law, medicine, etc. Until 1917, our statute did not prescribe where the examinations for entrance to the bar were to be held, and even now the statute (C. S. 195) says that examinations for license to practice law may be held in the city of Raleigh. Before 1917, the examiners for admission to the bar did not construe their authority to permit holding examinations outside the State, nor since 1917 at any place other than the city of Raleigh, even though the word "may" sometimes implies discretion. Sec. 6609 Consolidated Statutes prescribes that the board of medical examiners shall meet in the city of Raleigh. Sec. 6701 Consolidated Statutes prescribes that the board of osteopathic examiners shall meet in Raleigh in July of each year, "and at such other times and places as a majority of the board may designate." In our statutes, some discretion is permitted the various other boards of examiners for dentists, pharmacists, nurses, teachers, etc. In these cases, however, we are not left to apply only the general rules for the construction of statutes. THE LAW IS UNMISTAKABLY CLEAR THAT THE LEGISLATURE HAS NO POWER TO ENACT STATUTES, EVEN THOUGH IN GENERAL WORDS, THAT CAN EXTEND IN THEIR OPERATION AND EFFECT BEYOND THE TERRITORY OF THE SOVEREIGNTY FROM WHICH THE STATUTE EMANATES. THE LEGISLATIVE AUTHORITY OF EVERY STATE MUST SPEND ITS FORCE WITHIN THE TERRITORIAL LIMITS OF THE STATE. Cooley's Cons. Lim. p. 154. As a general rule, no law has any effect of its own force beyond the territorial limits of the sovereignty from which its authority is derived, 25 R. C. L., 781; Hilton v. Guyot, 159 N. S., 113, 40 L. Ed. 95. Black on Interpretation of Laws, p. 91, says: "Prima facie, every statute is confined in its operation to the persons, property, rights, or contracts, which are within the territorial jurisdiction of the legislature which enacted it. THE PRESUMPTION IS ALWAYS AGAINST ANY INTENTION TO ATTEMPT GIVING TO THE ACT AN EXTRA-TERRITORIAL OPERATION AND EFFECT." Endlich, on Interpretation of Statutes, p. 233, announces the same principle. No presumption arises, from a failure of the State through its legislative authority to speak on the subject, THAT THE STATE INTENDS TO GRANT ANY RIGHT, PRIVILEGE OR AUTHORITY UNDER ITS LAWS TO BE EXERCISED BEYOND ITS JURISDICTION. Walbridge v. Robinson, 22 Idaho, 236, 43 L. R. A. N. S., 240. Either the statute applies to "such places within the State as the Board may designate," or its scope is unlimited, and, for the convenience of applicants, the Board may hold examinations anywhere and everywhere it sees fit. And if this Board may go outside the State to hold examinations, why may not every other examining Board of the State do likewise if the place is left to its discretion? OBVIOUSLY, THIS WOULD BE SUBVERSIVE OF PUBLIC POLICY, OF THE SPIRIT AND INTENT OF THE LAW, WOULD DEFEAT THE VERY ENDS WHICH THESE PROTECTIVE STATUTES WERE ENACTED TO ACCOMPLISH, AND MIGHT, IN EFFECT, MAKE THE CREATURE GREATER THAN THE CREATOR.

We must not be understood as holding that the legislature may not require certain official acts to be done beyond the State's limits, for it can legally do so, as for example in requiring depositions of witnesses or the acknowledgment of a deed or other instrument, to be taken in some other State, or even in a foreign country, and perhaps there are other illustrations of this legislative power. But they are done by its express permission, and are not merely implied.

The demurrer of the defendants admits as true the allegations of the complaint that the defendants intended:

1. To hold the examination outside of the State.

2. To use in that examination the same questions that had been used in the preceding week in an examination in Raleigh, and

3. That these duplicate questions were available to candidates for certificates in the Washington examination.

The defendants say that it was at the solicitation of applicants and for their convenience (not for the public welfare or interest) that they proposed to give the duplicate examination in Washington the week following the Raleigh examination. As a matter of fact, the defendants do not deny that some applicants were going to Washington from North Carolina to take the duplicate examination. This Court may judge for itself of the relative "convenience" of Washington and Raleigh for applicants already in this State, and of the interest of the citizens of this State to be served by holding a duplicate examination outside the State the week after such examination was held in Raleigh. THE PLAINTIFF seems to be in entire accord with the statement of THE DEFENDANTS in their demurrer THAT THE ACT creating the State Board of Accountancy and prescribing its

duties and powers, WAS PASSED IN THE INTEREST OF THE GENERAL PUBLIC, TO PROTECT THEM AGAINST INCOMPETENT, INEFFICIENT, OR DISHONEST PERSONS, AND NOT FOR THE PURPOSE OF GRANTING SPECIAL PRIVILEGES OR EMOLUMENTS TO ANY CLASS OF PERSONS. The plaintiff contends, however, that in attempting to hold an examination in the city of Washington, "at the earnest solicitation of numbers of applicants living in that section," and, as stated by defendants on the hearing, "for the convenience of applicants," the Board was attempting to "grant special privileges" to those applicants, and an even greater "special privilege" was the intended use of duplicate questions which were available to applicants. This court with these admitted facts before it can judge whether an official act thus performed is "for the public interest" or for the promotion of the personal interest of applicants. It is an unprecedented thing for the other examining boards of the State to go beyond the borders of the State to give examinations (MUCH LESS DUPLICATE EXAMINATIONS) to applicants who may not find it convenient to come to the State to take the same. Yet the defendants claim that they are justified in going hundreds of miles beyond the State boundaries, the week following an examination in Raleigh, to give a duplicate of that examination because it is more convenient to certain applicants to take the examination in Washington—and some of the applicants going from this State to Washington for that purpose. As well suggested by the plaintiffs' learned counsel, it is peculiar to Certified Accountants in Washington that the mountain should come to Mohamet. IT IS AN ESTABLISHED RULE THAT WHEN THE MEANS FOR THE EXERCISE OF A GRANTED POWER ARE GIVEN, NO OTHER OR DIFFERENT MEANS CAN BE IMPLIED, AS BEING MORE EFFECTIVE OR CONVENIENT. Cooley's Cons. Lim. (4th Ed.) p. 78. In stating in the call that this was "positively the last examination to be held outside the State," the Board of Accountancy impliedly admits that it considered such procedure irregular, to say the least.

The authorities cited above, defining judicial and quasi-judicial officers, also establish the principle that when such officers exceed their jurisdiction or abuse their discretion, it is subject to review by the courts; in fact so fundamental is this principle that in most of the cases the courts do not discuss it, but address themselves to determining whether or not the act complained of was in excess of jurisdiction or in abuse of discretion, and if they decide these questions in the affirmative, then it is held as a matter of course that the act should be enforced or enjoined, as the case may be. In Throop on Public Officers, pp. 525, et seq., it is said that where, in the exercise of a power, an officer is vested with a discretion, his act is regarded as quasi-judicial. But, of course, if the officer or board attempts to exercise a power, either judicial or ministerial, in a case to which his or its jurisdiction does not extend, the act is either absolutely void or voidable by judicial proceedings, as the case may be. But the exercise of discretionary power is always subject, in some respects, to review by the courts. So it may be reviewed, where it has violated some rule of public policy, and of course it will be violated by any illegality or excess of jurisdiction. This principle has been enacted into our State laws for municipalities (C. S. 2962), giving to any taxable inhabitant the right to maintain an action to set aside or prevent any illegal official act on the part of the municipality or its officers, and it is also well settled by numerous decisions of this Court, and has received the sanction of the Supreme Court of the United States in Crampton v. Zabriskie, 101 U. S., 601, 609, quoted in Dillon Mun. Cor. Sec. 1581, and cited with approval in Stratford v. Greensboro, 124 N. C., 127. In referring to statutes similar to our own as found in C. S. 2962, Dillon Mun. Cor., Sec. 1585, says: "The first class of wrongs provided for by the statute is simply defined as 'an illegal act,' and the statute contains no express provision that the illegal official act against which redress is sought be one which has resulted or will result in loss or injury to the municipality. So far as the literal language of the statute is concerned, any illegal official act may be prevented at the suit of a taxpayer having the requisite status as such. This liberal interpretation of the statute has been supported by the courts." In the notes to the above, it is said, citing authorities, THAT AN ILLEGAL OFFICIAL ACT which may be the subject of the taxpayer's action MAY BE ANY ACT of a municipal officer—which is not authorized by law or WHICH IS IN EXCESS OF THE AUTHORITY CONFERRED BY LAW. In actions brought by taxpayers the court has taken jurisdiction and has restrained or annulled official acts of great diversity of character.

The State in the lawful exercise of its POLICE POWER has created the State Board of Accountancy and required examinations of applicants TO SAFEGUARD THE PUBLIC AGAINST INCOMPETENT ACCOUNTANTS. Every citizen of the State is, in a certain sense, injured when the duties of the Board are perpormed in such a manner as to let down the bars and lower the standards of the profession. There is an especial injury to properly accredited members of the profession who have met the conditions imposed by law, in the manner prescribed by law. Poor Richard says, "He who hath a trade hath an estate." A man's profession is his capital. The State has set standards for entrance into this profession, and those who have entered in the manner prescribed by law are entitled to the protection of the State to the extent at least, that they shall not be unjustly discriminated against by admission of others into the profession in any other way than that prescribed by law.

It is not necessary to go beyond the decisions of our own Court to establish the contention that this is a subject for the cognizance and intervention of our Courts. In Glenn v. Commissioners 139 N. C., 421, our Court said: "IF AN ULTRA VIRES ACT WERE BEING THREATENED, THE COURTS WOULD ENJOIN IT." IN ALL THE FOLLOWING CASES IT IS SAID THAT WHEN A DISCRETIONARY POWER IS EXERCISED WRONGFULLY, OR TRANSCENDS THE AUTHORITY OF THE OFFICERS, OR IS ULTRA VIRES, OR WHEN THERE IS A MANIFEST ABUSE OF DISCRETION, THE COURTS WILL ENFORCE OR ENJOIN THE ACT, as the case may be, at the suit of a citizen, or taxpayer, AND WHENEVER THE COURT HAS DECLINED TO INTERVENE, IT HAS BEEN ON THE GROUND THAT THE ACT COMPLAINED OF WAS INFRA VIRES. Broadnax v. Groom, 64 N. C., 244; Vaughan v. Commissioners, 118 N. C., 636; Stratford v. Greensboro, 124 N. C., 127; Edgerton v. Water Company, 126 N. C., 92; Ewbanks v. Turner, 134 N. C., 77; Barnes v. Commissioners, 135 N. C., 27; Graves v. Commissioners, 135 N. C., 49; Merrimon v. Paving Company, 142 N. C., 539; Newton v. Commissioners, 156 N. C., 116; Commissioners v. Commissioners, 165 N. C., 632; Supervisors v. Commrs., 169 N. C., 548; Cobb v. R. R., 172 N. C., 58.

The decisions of the courts of other States and the principle announced by the various text-books, are well summarized in Perkins v. Indi. School Dist., 56 Iowa, 476; 9 N. W., 356, where it was held that the Courts of the State are arbiters of all questions involving the construction of the statutes conferring authority upon officers and jurisdiction upon special tribunals. It was certainly never the intention of the Legislature to confer upon school boards, superintendents of schools, or other officers discharging quasi-judicial functions, exclusive authority to decide questions pertaining to their jurisdiction and the extent of their power. All such questions may be determined by the Courts of the State. Hence, when the rights of a citizen are involved, in the exercise of authority by a school officer, the courts may determine whether such authority was lawfully exercised.

As the demurrer, we have covered the entire field of inquiry, as the facts stated in the complaint are to be taken as admitted. On the motion for a continuance of the injunction to the hearing, there is an affidavit of Mr. G. G. Scott, denying that the same questions as propounded in the State were used in the Washington examination, thereby giving the applicants there a decided advantage over those examined here. But we need not settle the controversy of fact, because it has been the rule for time out of mind that where there is conflict in the evidence the injunction is generally continued to the hearing. We stated the prevailing rule in Cobb v. Clegg, 137 N. C., 153, at p. 159., where it was said that it is generally proper, when the parties are at issue concerning the legal or equitable right, to grant an interlocutory injunction to preserve the right IN STATU QUO until the determination of the controversy, and especially in this rule when the principal relief sought is in itself an injunction, because a dissolution of a pending interlocutory injunction, or the refusal of one, upon application therefor in the first instance, will virtually decide the case upon its merits and deprive the plaintiff of all remedy or relief, even though he should be afterwards able to show ever so good a case. The principles we have attempted to state, are, we think, well supported by the authorities upon this subject, citing 1 High on Injunctions, (3 Ed.) Sec. 6; Bishpams Eq. (6 Ed.) Sec. 405; Marshall v. Commrs., 89 N. C., 103; Capehart v. Mahoon, 45 N. C., 30; Jarman v. Saunders, 64 N. C., 367; Lowe v. Commrs., 70 N. C., 532, and other authorities. In the Marshall case, supra, the court said: "The injunctive relief sought in this action is not merely auxiliary to the principal relief demanded, but it is the relief, and a perpetual injunction is demanded. To dissolve the injunction, therefore, would be practically to deny the relief sought and terminate the action. This the court will never do where it may be that possibly the plaintiff is entitled to the relief demanded. In such cases it will not determine the matter upon a preliminary hearing upon the pleading and EX PARTE affidavits; but it will preserve the matter intact until the action can be regularly heard upon its merits. Any other course would defeat the end to be attained by the action." The case last cited is directly in point here. But without the aid of this principle and the authorities sustaining it, we hold that the injunction should have been continued to the final hearing. It is argued that this case is like that where the tree was cut down, after the restraining order against felling it had been vacated. Harrison v. Bryan, 148 N. C., 315, and these additional cases are cited supposedly to the same effect. Pickler v. Board of Education, 129 N. C., 221; Wallace v. North Wilkesboro, 155 N. C., 614; Moore v. Monument Co., 166 N. C., 211. But they do not apply to this case, as the facts are not the same. In Harrison v. Bryan, supra, the tree had fallen under the stroke of the axe, never to rise again. It could not grow again after it had been destroyed. It had died and was therefore beyond restoration. That was a fact established, and not even a mandatory injunction could change it. But here, the act of the defendants may be repeated—it, at least, is possible for them to do so, and plaintiffs are not bound by their declared intention not to repeat their mistake. THE LAW WILL STRIP THEM OF THE POWER TO DO SO BY ITS RESTRAINING PROCESS.

The entire judgment below will be reversed, injunction to the final hearing issued, the demurrer overruled, and the defendants permitted to answer over, if they so desire.

REVERSED.

(Seal).

A true copy:

J. S. SEAWELL,
Clerk Supreme Court.