

Opinion No. 88-07

January 19, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Scott Spencer, Assistant Attorney General,

TO: Sabino Olivas, Chairman, Board of Public Accountancy, P.O. Box 25683,
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QUESTIONS

Whether Regulation 3006, recently adopted by the New Mexico Board of Public Accountancy, conflicts with the New Mexico Public Accountancy Act of 1987 and is thus invalid?

CONCLUSIONS

Yes.

ANALYSIS

Section 61-28-30A of the New Mexico Public Accountancy Act of 1987, Sections 61-28-1 to 61-28-34 NMSA 1978, provides:

Any person who is a resident of the state, has reached the age of majority, is of good moral character, is a graduate of an accredited high school or has an equivalent education and has had at least three years of public accounting experience shall, upon proper application, be eligible to take the [registered public accountant or certified public accountant] examination. For applicants who have majored in accounting and are graduates of the school of business administration of an accredited university, school or college of New Mexico or of other states of equal standing and requirements, the time devoted to the completion of such studies in accounting theory and practice shall be deemed the equivalent of two years of public accounting required in this subsection. Applicants who have majored in accounting and are graduates of the school of business administration of an accredited university, school or college of New Mexico or of other states of equal standing and requirements may take the examination upon the completion of their academic work and subsequently fulfill the requirement of one year of public accounting experience, at the termination of which time a certificate as provided in Subsection B of this section shall be issued.

After January 1, 1988, all applicants to take the examination for a certified public accountant shall:

(1) have a baccalaureate degree with a major in accounting conferred by a college or university recognized by the board; or

(2) have a baccalaureate degree with a nonaccounting major conferred by a college or university recognized by the board, supplemented by what the board determines to be substantially the equivalent of an accounting major, including related courses in other areas of business administration; or

(3) on July 1, 1971 be licensed as a registered public accountant by the board; or

(4) have taken the examination for registered public accountant during 1986.

Several months ago this office reviewed several applications for the registered public accountant examination. In a letter to the Board we had the occasion to discuss the education one must have in order to receive credit for two years of public accounting experience and to take the examination after completing one's studies. The Board, as a result of our explanation, realized that its practice of admitting to the examination non-accounting majors who have supplemented their degrees was not consistent with the language of Section 61-28-30A. The Board's response to its realization was to pass Regulation 3006. The regulation grants two years of public accountancy experience to non-accounting majors who have supplemented their degrees with what the board determines to be substantially the equivalent of an accounting major and allows them to take the examination immediately after completing their studies. It states as follows:

For the purposes of interpreting Section 61-28-30.A, NMSA 1978, applicants who (1) have a baccalaureate degree with a major in accounting conferred by a college or university recognized by the board, or (2) have a baccalaureate degree with a nonaccounting major conferred by a college or university recognized by the board, supplemented by what the board determines to be substantially the equivalent of an accounting major, including related courses in other areas of business administration, shall be deemed to be equivalent to applicants who have majored in accounting and are graduates of the school of business administration of an accredited university, school or college of New Mexico or of other states of equal standing and requirements. Therefore, the time devoted by such applicants to the completion of such studies in accounting theory and practice shall be deemed the equivalent of two years of public accounting experience required in Section 61-28-30.A, NMSA 1978.

An administrative body has no common law or inherent powers, and cannot amend or enlarge its statutory authority under the guise of making rules and regulations. *Public Serv. Co. of N.M. v. New Mexico Env'tl. Improvement Bd.*, 89 N.M. 223, 226, 549 P.2d 638, 641 (Ct.App. 1976); *Chalamidas v. Environmental Improvement Div.*, 102 N.M. 63, 66, 691 P.2d 64, 67 (Ct.App. 1984). An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority. *New Mexico Bd. of Pharmacy v. New Mexico Bd. of Osteopathic Med. Examiners*, 95 N.M. 780, 782, 626 P.2d 854, 856 (Ct.App. 1981). If an administrative body creates a rule or regulation that exceeds its authority or conflicts with a statute, the statute's language must prevail. The

rule or regulation must yield to the guidelines that the statute establishes. *Jones v. Employment Serv. Div.*, 95 N.M. 97, 99, 619 P.2d 542, 544 (1980); *Family Dental Center of N.M. v. New Mexico Bd. of Dentistry*, 97 N.M. 464, 467, 641 P.2d 495, 498 (1982). A regulation in conflict with a statute is void. *State ex rel. McCulloch v. Ashby*, 73 N.M. 267, 271, 387 P.2d 588, 590 (1963); *Rainbo Baking Co. of El Paso v. Commissioner of Revenue*, 84 N.M. 303, 305, 502 P.2d 406, 408 (Ct.App. 1972). The issue, then, is whether Regulation 3006 goes beyond the statute's authority or is in conflict with it.

The first sentence of Section 61-28-30A establishes five criteria for eligibility to take the examination to become a registered or a certified public accountant ("RPA" or "CPA"): a person must be a resident of the state, be the age of majority, be of good moral character, be a graduate of an accredited high school or have an equivalent education, and have at least three years of public accounting experience. The second sentence credits applicants with two years of public accounting experience if they have majored in accounting, and are graduates of the school of business administration of an accredited university, school, or college of New Mexico or of other states of equal standing and requirements. The third sentence allows applicants credited with two years of public accounting experience to take the examination upon completing their academic work and subsequently fulfill the additional one year of public accounting experience. Thus, the second and third sentences expressly provide an exception only from the experience requirement for both RPA and CPA candidates.

The second paragraph of Section 61-28-30A requires CPA applicants after January 1, 1988 to have a baccalaureate degree with a major in accounting conferred by a college or university recognized by the board, or have a baccalaureate degree with a nonaccounting major conferred by a college or university recognized by the board, supplemented by what the board determines to be substantially the equivalent of an accounting major, including related courses in other areas of business administration. The operative date of January 1, 1988, is not significant to this inquiry, because substantially similar provisions were in place before the 1987 amendment of this statute.

Regulation 3006 seeks to interpret the second sentence of the first paragraph in Section 61-28-30A. As discussed above, that sentence credits applicants with two years of public accounting experience if they have majored in accounting, and are graduates of the school of business administration of an accredited university, school, or college of New Mexico or of other states of equal standing and requirements. Regulation 3006 would grant this credit also to applicants who meet the criteria set forth in the second paragraph of Section 61-28-30A, that is, persons who have a baccalaureate degree with a nonaccounting major conferred by a college or university recognized by the Board, supplemented by what the Board determines to be substantially the equivalent of an accounting major, including related courses in other areas of business administration.

Under well established principles of statutory construction, Regulation 3006 conflicts with Section 61-28-30A:

When a term is not defined by statute, it is appropriate...to interpret the words in accordance with its [sic] ordinary meaning.... [citation omitted] Absent any clear intent to the contrary, statutory words are to have their ordinary and usual meaning.... [citation omitted] ... [W]hen they are free from ambiguity and doubt and express plainly, clearly, and distinctly the sense of the legislature, no other means of interpretation should be resorted to.

McCurry v. City of Farmington, 97 N.M. 728, 731, 643 P.2d 292, 295 (Ct.App. 1982). Words and phrases ordinarily will be construed according to the context and approved usage of the language. Section 12-2-2A NMSA 1978. The second sentence of the first paragraph of Section 61-28-30A is clear and unambiguous. The legislature could have, if it wished, also granted two years of public accounting experience to nonaccounting majors who supplemented their degree with the equivalent of a major in accounting. It did not. This intentional failure to expand the class of applicants to whom experience credit was available is especially apparent where in the same subsection the legislature distinguished between those with majors and those without. To determine legislative intent, one must read the entire act as a whole, and each part is construed with every other part so as to produce a harmonious whole. Mitschelen v. State Farm Mut. Auto. Ins. Co., 89 N.M. 586, 590, 555 P.2d 707, 711 (Ct.App. 1976). Because the legislature clearly did not intend to credit the applicants without accountancy majors with two years of public accounting experience, the board may not do so by regulation. It is our opinion that the regulation is in conflict with the statute and thus is void.¹

We are aware of the consequences of this language in Section 61-28-30A. Arguably, college graduates who did not major in accounting theory and practice but who have taken a substantial amount of accounting course work, deserve two years of credit as well. Nevertheless, this is a decision that the legislature has made. However wise or unwise it may be, neither the Board nor the Attorney General may ignore the legislature's will under the guise of an "interpreting" regulation. The solution is for the legislature to amend the statute.

ATTORNEY GENERAL

HAL STRATTON Attorney General

GENERAL FOOTNOTES

ⁿ¹ We caution the Board not to interpret this opinion as saying that the Board's own interpretation of its statute should not be given great weight. Such is not the case. The Board's interpretation should be given great weight unless it is plainly erroneous or inconsistent with the statute or regulation being interpreted. See, e.g., *Bowles v. Seminole Rock Co.*, 325 U.S. 410, 413-14 (1945); *Borrego v. United States*, 577 F. Supp. 408, 412 (D.N.M. 1983).