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REC.
STATE OF NEBRASKA
OFFICIAL
MAR 5 1992
DEPT. OF JUSTICE

DATE: March 3, 1992

SUBJECT: Limitation of Authority of the State Board of Public Accountancy to Prescribe Education Requirements for Certified Public Accountants.

REQUESTED BY: Marshall R. Whitlock, Executive Director
Board of Public Accountancy, State of Nebraska

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have requested our opinion on several questions relating to the statutory authority of the Board of Public Accountancy to establish postsecondary education requirements for certified public accountants.

The Public Accountancy Act of 1957, Neb.Rev.Stat. §§ 1-105.01 et seq., was amended by the Legislature in the 1991 Session. Briefly stated, the principle effect of the amendments require a five year course of study at postsecondary education levels for candidates for certificate of Certified Public Accountant after January 1, 1998. Prior to this date, a four year college education (graduate of a college or university of recognized standing) are the quantitative postsecondary education requirements. It is the board's function to determine that appropriate courses in accounting, auditing, business and other disciplines are included within the five year course of study. The amendments further provide that the board appoint an advisory committee to assist in

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determining the composition of educational requirements to be included in the five year course of study.[1]

Your specific inquiry relates to the limitation, if any, concerning educational requirements imposed by the amendatory language included in Neb.Rev.Stat. § 1-116 (Supp. 1991). Following amendment, Neb.Rev.Stat. § 1-116 in part states:

> (2) Any person making initial application on or after January 1, 1998, to take the examination shall have completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and shall have a baccalaureate or higher degree from a college or university accredited by the North Central Association of Colleges and Universities or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit. The board shall not prescribe the specific curricula of colleges or universities.

(Emphasis added).

We believe that the statutory language essentially prohibits the board from establishing educational requirements which would cause state colleges and universities to revise existing curricula to accommodate specific course requirements established by the board. The basic rule in interpretation of a statute is to ascertain legislative intent and give effect to it. State ex rel. Meyer v. Lancaster County, 173 Neb. 195, 113 N.W.2d 63 (1962). The legislative history of LB 75 has been reviewed and the history clearly reflects the Legislature's purpose for the statutory language under question. The Floor Debate for LB 75, February 27, 1991, includes the following discourse concerning amendment, AM 5028, of LB 75:

> CLERK: Well, your amendment, Senator . . . (Read Hartnett amendment as found on page 831 of the Journal.)

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[1]The amendments in part require that the advisory committee consist of at least seven members to advise the board concerning rules and regulations which establish educational requirements for certified public accountants. 1991 Neb.Laws, LB 75, § 2 [codified at Neb.Rev.Stat. § 1-113 (Supp. 1991)].

SENATOR HARTNETT: Yeah. And this was really a . . . this was really the amendment brought to me, was, I think, that a board shall not prescribe the specific curriculum of universities and colleges. Now, Senator Beutler had some concern about this advisory board over CPA's would dictate to the universities and so forth. And so this is the amendment the University of Nebraska, UNO, and Creighton Universities can still decide on their curriculums. That is basically what it does, it specifies that the university themselves have power. So, with that, unless there are any questions, I'd ask for the adoption of the amendment.

SPEAKER BAACK: Okay, Senator Hartnett. Is there anyone else . . . is there anyone else who wishes to discuss this amendment? Seeing none, Senator Hartnett, do you wish to close?

SENATOR HARTNETT: No, I just . . .

SPEAKER BAACK: He waives closing. We will now proceed to vote on the amendment by Senator Hartnett. All those in favor vote aye, opposed vote no. Record Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Hartnett's amendment.

SPEAKER BAACK: Senator Hartnett's amendment is adopted. Any thing further on the bill? Is there anyone here who was going to handle Senator Beutler's amendment? Okay, we'll go ahead and move the bill then. I think Senator Hartnett's amendment did basically the same thing that Senator Beutler's amendment was going to do anyway. . .

The dialogue of Senator D. Paul Hartnett, Principal Introducer, is indicative of the purposes of the amendment. Obviously, legislative members were concerned that the board, by selection of specific academic course criteria, would dictate or prescribe the curricula of state colleges and universities. The amendment including the limiting provision was adopted for the very purpose of preventing this occurrence. A statute should be construed in the context of the objects to be accomplished, evils and mischiefs to be remedied, and purposes to be served. Rosnick v. Marks, 218 Neb. 499, 357 N.W.2d 186 (1984). In applying this rule of construction in light of the legislative intent, we conclude that the board may not specify individual course selections inconsistent with or not available in the existing curricula of state colleges and universities.

You also inquire whether the board may adopt a "regulation specifying that certain number of hours be taken" in designated academic disciplines. In conjunction with this question you have enclosed materials titled "An Illustrative Program" and inquire whether such a program may be adopted into regulation. The program generally outlines a course of postsecondary study consisting of one hundred-fifty credit hours and specifies the number of course hours in general education, business administration education and accounting education. We are unable to say whether the proposed program would violate the statutory limitation. The format of the program is acceptable but the specified number of hours is subject to question. The question is factual in nature and the answer is dependent on the content of existing curricula of state colleges and universities. That is, if the credit hours specified in the academic disciplines exceed existing curricula, the education requirements would appear to prescribe or dictate the curricula of colleges and universities.

The very purpose of the advisory committee is to advise the board relating to educational requirements to be implemented after January 1, 1998. Accordingly, the committee would necessarily select and recommend educational requirements which do not exceed existing course offerings of state colleges and universities. We conclude that the educational requirements established should necessarily conform to existing curricula of state colleges and universities to comply with the standard expressed in Neb.Rev.Stat. § 1-116.

Sincerely yours,

DON STENBERG
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Approved By:

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21-285-6.92