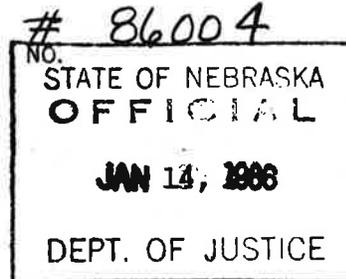


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: January 9, 1986

SUBJECT: Authority of the Board of Public Accountancy to adopt rules and regulations establishing a quality review program requiring submission and review of reports as a condition for licensure.

REQUESTED BY: Lon W. Morrey, Executive Director
Nebraska State Board of Public Accountancy

WRITTEN BY: Robert M. Spire, Attorney General
John Boehm, Assistant Attorney General

This is in response to your letter of December 27, 1985. You indicate in your letter that the Board is contemplating an expansion of its Positive Enforcement Program to a quality review program which would make submission and review of reports by licensees a condition for their licensure. Your question is whether the Board has authority to establish such a program through rules and regulations.

In this regard, we note that we have reviewed the letter you enclosed from the attorney for the Nebraska CPA Society and a prior letter from our office dated October 29, 1984, which deals with this question. We concur with the general conclusions contained in those letters that the Board does have such authority.

Neb.Rev.Stat. §1-105.01 (Supp. 1984) provides that:

It is the purpose of the Nebraska State Board of Public Accountancy to protect the welfare of the citizens of the state by assuring the competency of persons licensed under Chapter 1, article I, through (1) administration of certified public accountant examinations, (2) certification and licensing of qualified individuals and firms, (3) monitoring the requirements for continued certification and licensure, and (4) disciplining certificate and permitholders who fail to comply with the technical or ethical standards of the public accountancy profession.

L. Jay Bartel
John M. Boehm
Dale D. Brodkey
Martel J. Bundy
Janie C. Castaneda

Dale A. Comer
Laura L. Freppel
Lynne R. Fritz
Ruth Anne E. Galter
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Bernard L. Packett

Terry R. Schaaf
LeRoy W. Sievers
Mark D. Starr
John R. Thompson
Linda L. Willard

Mr. Lon W. Morrey
January 9, 1986
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Neb.Rev.Stat. §1-112 (Reissue 1983) further provides that:

The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy.

The enactment of rules and regulations adopting such a program would be consistent with the establishment and maintenance of a high standard of integrity and dignity in the profession of public accountancy. Likewise, such a program is consistent with the general purpose of the Board to certify and license qualified individuals and to monitor the requirements for continued certification and licensure. Consequently, we must conclude that the Board does have the general authority to adopt rules and regulations concerning such a program. Obviously, we cannot comment on the specifics of such a program at this time.

In addition, you also note that you are concerned about providing some protection to the voluntary reviewers under this program. You thus ask that if such individuals were to enter into a contract to perform the reviews at a nominal fee, whether they would then be state employees and thereby afforded liability protection for the discharge of such duties. This office has maintained the position that the liability protection afforded under the Tort Claims Act applies only to officers and employees of the State of Nebraska. The individual reviewers you describe, would be independent contractors and would not be considered officers or employees of the State of Nebraska. They would thus not be afforded any liability protection under state law.

Sincerely,

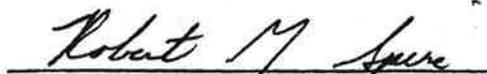
ROBERT M. SPIRE
Attorney General



John Boehm
Assistant Attorney General

JB/bae

APPROVED:


Attorney General