

Certified Public Accountant. Public Accountant, Certificate Of. Accountant, Public, Certificate Of. University Board of Examiners, Accountants. Foreign Accountants, Certificate To.

Chap. 39, Laws of 1909, relating to certified public accountants is not operative until the state board of education have acted thereon in the appointment of a "Board of Examiners." Said board of education has the authority by rules to prescribe what recognition shall be accorded to diplomas held by persons from foreign schools. Illinois law examined and construed.

November 27th, 1911.

Hon. C. A. Duniway, Pres.,
University of Montana,
Missoula, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 16th inst., submitting

the question as to whether the University of Montana has authority to "issue the Degree of Certified Public Accountant upon the recommendation of the board of examiners" to a person holding such degree and certificate issued by the University of the State of Illinois.

The law of Montana dealing with this subject is found in Chapter 39, Laws of 1909. This law is rather peculiar in some of its provisions as applied to a public institution and bears the impress of having been enacted for the purpose of conferring upon some private corporation the authority "to issue the Degree of Certified Public Accountant." The statement of Section 1, of the Act:

"University of Montana, a corporation organized and existing under the laws of this state and hereinafter referred to as the 'University' "

would rather suggest a private corporation than a public institution, but of course, no such private corporation could exist by that name, but this fact would not prevent an attempt being made by an association to appropriate that name. The "University of Montana" is not a corporation, neither public nor private, and it possesses no corporate power or authority. When, therefore, in the act the word "University" is used in connection with a power conferred, it must have reference to the governing body of the University, which is the state board of education.

Chap. 73, Laws of 1909.

Section 2, of said Chapter 39, authorizes the university to appoint a "Board of Examiners" consisting of three persons who shall hold office for a period of three years and prescribes their qualifications, which shall be, the holding of "the Degree of Certified Public Accountant" granted to them under this act, or be entitled to receive the Degree without examination in accordance with the purport and intent of Clause 3, of Sec. 4, of the act. The qualifications provided in said Clause 3, of Sec. 4, are 25 years of age, good moral character, graduate of an accredited high school, or equivalent education, three years experience in the practice of public accounting, etc. Holding that this Act, notwithstanding any intention that may have rested with the author, does have reference to the state institution known as "University of Montana," then it seems to me that the authority vested in the University to select and appoint this board of examiners, is in fact vested in the governing board of that institution, to-wit, the state board of education. The first board of examiners appointed under the terms of the act could not possibly be the holders of the "Degree of Certified Public Accountant" granted under the act, but must possess the other qualifications above named, and the appointing power prior to making the appointment must necessarily determine that the persons so appointed possessed such qualifications. Before, therefore, the act can become operative at all some action is required on the part of the state board of education, either by making the appointment or by authorizing some other board or person to exercise this power. I am informed that the minute entries of the proceedings had by said board of education do not contain any reference to this law, however,

it is possible that some action was had by referring the matter to some local board or by conferring the general power upon such local board by some general order to appoint this board of examiners. Whether this has been done is a question of fact which I cannot at this time determine. If it never has been done, then the law is inoperative until the state board of education does take some action with reference thereto, and no degree could "be issued" to any one, but if such board of examiners has been appointed by proper authority, then the degree may be granted in the manner provided in the act. Under the provisions of Sec. 4, the university is authorized to "issue the degree of Certified Public Accountant" to the holder of a Certified Public Accountant certificate issued under the laws of another state which extends like privileges to certified public accountants of this state, provided, the requirements are equal to those required in this state.

The law of the State of Illinois as presented to us authorizes the University to waive the examination and to grant the degree:

"to any person who shall have been actively in practice as a public accountant for not less than five years last prior to the passage of this act, outside of the State of Illinois, who shall have passed an examination equivalent in the opinion of the University of Illinois to the examination to be held under the provisions of this act."

Under this provision of Illinois law the University of Illinois is not authorized to grant this degree to any one upon a certificate issued to him by the University of the State of Montana, hence, under the provisions of Section 4, of Chapter 39, Laws of 1909, the University of Montana cannot legally grant this certificate of "Certified Public Accountant" to the holder of a certificate issued to him by the State of Illinois, but in order to obtain such certificate the holder of such Illinois certificate would be required to subject himself to examination. However, the Illinois law does contain this provision:

"Providing that nothing herein contained shall operate to prevent a certified public accountant who is a lawful holder of a certificate issued in compliance with the laws of another state from practicing as such within this state and styling himself a certified public accountant."

In this respect the Illinois law is more liberal than the Montana law for while they do not issue to the holder of the Montana certificate a certificate from the University of Illinois, they do permit the holder of the Montana certificate to practice in that state upon his Montana certificate. The phrase, as used in Sec. 4, "like privileges" I believe confers upon the state board of education the authority to prescribe rules by which the holders of certificates issued by the University of Illinois would be permitted to practice in the State of Montana in the same manner that the holder of the Montana certificate is permitted by the Illinois law to practice in that state, but this will again require affirmative action by the state board of education. For these reasons, I believe you are justified in withholding from Mr.

Batton the certificate applied for by him and that the same is a proper subject to be presented to the state board of education for consideration and action and for the adoption of rules and regulations to be used in such cases.

Very truly yours,

ALBERT J. GALEN,

Attorney General.