Opinion No. 79.

Public Accounting, License to Engage in—Statutes—Construction.

HELD: Section 3241.1 as amended by Chapter 90, Laws 1935, does not require that applicant for certificate as certified public accountant shall have engaged in public accounting or auditing for five years immediately before making application for license.

Where the words of a statute are plain and unambiguous there is no occasion for construction.

Statute's abrogating common law rights, particularly the right to engage in one's occupation, should be strictly construed.

April 1, 1937.

Board of Examiners in Accountancy
University of Montana
Missoula, Montana

Gentlemen:

Section 3241.1 as amended by Chapter 90, Laws of 1935, provides:

"All persons are certified public accountants of this state who are entitled to practice as certified public accountants therein, and every person is entitled to be certified by the state university of Montana (hereinafter referred to as the university) as a certified public accountant **who shall have been engaged in public accounting or auditing exclusively and continuously for at least five years before making application to the university for a certificate as a certified public accountant,** * * *."

From March, 1920 to July, 1933, George H. Platt was engaged exclusively and continuously in public accounting or auditing in the State of Montana; as a result of the depression and the necessity of supporting his family, he took part-time work running an auto street sweeper in Great Falls, for about ten days each month, or a total of sixty days from July, 1933 to April, 1934. In April, 1934 to October, 1934, he was employed as a timekeeper on a W.P.A. Project for the State Highway Department, and from October 1934 to December, 1934, he was employed as accountant to Clapper Motor Company at Cut Bank, thus for a period of nine months he was employed full time at other work altho he claims that at all times he maintained outside connections in accountancy. On September 24, 1935, he made application to the university for a certificate as required by said Section 3241.1 as amended, but his application was denied on the ground that he had not been engaged in public accounting or auditing exclusively and continuously for five years **immediately** before making his application.

The action of the board in denying the application seems to have been

based upon its construction of the statute and informal opinion or letter written by G. J. Dousman as Assistant Attorney General, expressing the view that "the terms 'exclusively' and 'continuously' in the statute should mean immediately preceding the date of the application." No reason was stated for this view except that he did not believe that the intent of the legislature was otherwise.

Whether Mr. Platt is entitled to a certificate depends upon the construction to be placed upon the language of the statute above quoted. Does the statute mean that applicant shall have been engaged in public accounting or auditing exclusively and continuously for any five-year period before making application, or does it mean that applicant shall have been engaged exclusively and continuously for at least five years immediately before making application? Whichever interpretation is placed upon the statute leads to injustices and absurdities. It is pointed out that if any period of five years may be taken, then a person may go back ten or fifteen years, or any number of years to find his qualifications. It is argued that one who has for so many years been out of the work would not be qualified and should not be given a certificate. Against this it may be said that while this is possible, such a situation is largely theoretical and, so far as we are advised, actually has not occurred at any time prior to the amendment to the statute made in the Laws of 1937. On the other hand, if the word "immediately" is supplied as expressing the intention of the legislature, grave injustice may occur to persons who, on account of illness, other necessity or reason, were temporarily unable or unwilling to engage in public accounting or auditing immediately before the passage of the Act, and that their efficiency to engage in such occupation has not been thereby impaired.

There are two difficulties to construing the statute so as to include the word "immediately" before the word "before" so that it would read "immediately before" instead of "before," and both of them seem to us insuperable.

First: The phrase "who shall have been engaged in public accounting or auditing exclusively and continuously for at least five years before making application * * *" is plain, unambiguous, direct and certain. It speaks for itself and there is nothing to construe. Our Supreme Court, speaking by Chief Justice Callaway, in Chmielewska v. Butte & Superior Mining Co., 81 Mont. 36, 260 Pac. 616, said (p. 42):

> "Our duty is not to enact but to expound the law, not to legislate but to construe legislation; to apply the law as we find it, to maintain its integrity as it has been written by a co-ordinate branch of the state government.' (Cooke v. Holland Furnace Co., 200 Mich. 192, L. R. A. 1918E, 552, 166 N. W. 1013.) When the terms of a statute are plain, unambiguous, direct and certain, the statute speaks for itself; there is naught for the court to construe. So it is here; * * * ."

Again in Maki v. Anaconda Copper Mining Co., 87 Mont. 314, 287 Pac. 170, our court, speaking by Mr. Justice Matthews, said (p. 324):

> "No rule of construction can justify the disregard of the plain mandate of the law. 'In the construction of a statute the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted. (Sec. 10519, Rev. Codes 1921),' (Chmielewska v. Butte & Superior Mining Co., above.)"

The court again had occasion to voice this principle in Clark v. Olson, 96 Mont. 417, 31 Pac. (2) 283. The court, speaking by Chief Justice Callaway, said (pp. 431-432):

> "Sections 2838 and 2839 are plain and unequivocal. The intention of any legislation must be inferred in the first place from the plain meaning of the words used. If this intention can be so arrived at, the courts may not go further and apply other means of interpretation. (State v. Cudahy Pack-

ing Co., 33 Mont. 179, 82 Pac. 833, 144 Am. St. Rep. 804, 8 Ann. Cas. 717; State ex rel. Rankin v. Wibaux County Bank, 85 Mont. 532, 281 Pac. 341; Great Northern Utilities Co. v. Public Service Commission, 88 Mont. 180, 293 Pac. 294.) 'If the legislature did not intend that the courts should accept and act upon this statute as it is written, then the legislature, and not the courts, should amend the Act and make it clearly express the legislative will.' (Johnson v. Butte & Superior Copper Co, 41 Mont. 158, 108 Pac. 1057, 1061, 48 L. R. A. (N. S.) 938.) In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. (Sec. 10519, Rev. Codes 1921.) 'Our duty is not to enact, but to expound the law, not to legislate, but to construe legislation; to apply the law as we find it, to maintain its integrity as it has been written by a co-ordinate branch of the state government.' Cooke v. Holland Furance Co., 200 Mich. 192, 166 N. W. 1013, L. R. A. 1918E, 552.)' (Chmielewska v. Butte & Superior Mining Co., 81 Mont. 36, 261 Pac. 616, 617.)"

The court in that case quoted with approval the following language from Taylor v. Fidelity & Casualty Co., 246 Ky. 598, 55 S. W. (2d) 410, 413:

"The conclusion might appear to be harsh, but courts are not responsible for conditions brought about by statutory enactments. Their duty ceases when the task of construction is performed and when it is found that the statute transgresses no inhibition of the Constitution. Neither are courts authorized to inject into a statute a provision, or part of another independent one, upon the theory that there is no substantial reason for its omission from the statute under consideration, since they are not authorized to amend a statute to conform to what may be concluded as a better reason for its enactment, nor to supply a reason when the legislature enacting it has not done so."

Not only is this a general principle recognized by all courts (see 59 C. J. p. 952, Sec. 569) but it has been expressly expressed in a statute, Section 10519 R. C. M., 1935:

"In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; * * * ."

Second: Even if there were occasion for construction of the statute, it is the rule in such cases that it must be construed strictly, as an implied abrogation of common law rights is not favored. It is the general rule that laws which restrain the exercise of any trade or occupation are to be construed strictly. Such rights are not deemed changed unless it appears by express words or plain implication that it was the intention of the legislature to change them. Such rights will be no further abrogated than the clear import of the language requires. We believe this rule is universally recognized. (See 59 C. J. p. 1124, sec. 665, and the numerous cases cited therein.) Applying this test it cannot be said that it was the clear intent of the legislature to require five years of work in public accounting or auditing immediately before making application, thereby depriving a man of the right to engage in his occupation after following that occupation for over thirteen years exclusively and continuously. His rights were established under the law before it was again amended in 1937. The certificate should have been issued to him upon his application in September, 1935. He has not lost any of his rights by the last amendment, which is not retroactive.

For the reasons given, it is my opinion that the applicant, admittedly having produced satisfactory evidence of the other statutory requirements, is entitled to the certificate specified in said Section 3241.1.