

Opinion No. 66**Certified Public Accountants — Examination, Certified Public Accountants—Board of Examiners in Accountancy**

Held: 1. An applicant for the certificate of Certified Public Accountant shall be entitled as a matter of right to only one examination in each year. The Board of Examiners in Accountancy and the University of Montana may, in the exercise of their discretion, allow an applicant who has failed to pass the examination in Accountancy to retake the examination in the same year in which he has previously failed.

October 28th, 1949.

Mr. Conrad T. Bjornlie, Secretary
State Board of Examiners in Accountancy
Thisted Building
Great Falls, Montana

Dear Mr. Bjornlie:

You have requested my opinion on the following question:

"May an applicant, who has taken the Certified Public Accountant's examination and failed, take the examination again

during the same year, providing the Board of Examiners hold another examination that year?"

Sections 3241.1 through 3241.12, Revised Codes of Montana, 1935, as amended, relate to the regulation of practice of Public Accountants.

Section 3241.1, as amended by Chapter 106, Session Laws of 1937, provides for the qualifications of persons seeking to receive the certificate of Certified Public Accountants. The primary qualification must be the successful passing of the examination given by the Board of Examiners in Accountancy.

Section 3241.6, *supra*, is as follows:

"The University shall be entitled to receive for the examination and certificate, provided for in section 3241.1, a fee of twenty-five dollars, payable in advance at the time of making application therefor. Any applicant who shall fail to pass an examination shall be entitled to further examinations within the next two succeeding years following such failure, but at such times only as the Board of Accountancy shall hold the regular examination, prescribed in Section 3241.5. Such applicant shall not be entitled to more than one examination in each year, providing, that for each additional examination, after the failure of such applicant to pass, a fee of five dollars shall be paid by said applicant for each additional examination.

The above quoted Section has been interpreted in an opinion rendered by one of my predecessor's in the office of Attorney General. In Opinion No. 82, Volume 21, Report and Official Opinions of Attorney General, the then Attorney General ruled that an applicant who has failed in the Certified Public Accountant's examination may take further examinations within the next two succeeding years following such failure, but in no event shall he be entitled to more than one examination in each year. I agree with the conclusion of Opinion No. 82, *supra*, that an applicant shall not be "entitled" to more than one examination in each year, however, such decision does not in my opinion preclude the Board of Examiners in Accountancy, acting in conjunction with the University of Montana, from allowing the unsuccessful applicant to retake the examination within the year following his failure.

The legislature, in Section 3241.6, *supra*, has used the phrase "shall not be entitled to more than one examination in each year." Entitle is defined in Webster's New International Dictionary, 2nd Edition, as follows:

"To give a right or legal title to; to qualify for; to furnish with proper grounds for seeking or claiming."

In *People's Trust Co. v. Smith*, 30 N. Y. S. 342, 31 Abb. N. C. 422, in construing the phrase "shall be entitled," the court said:

"To 'entitle' is defined as 'to give a title, right, or claim; to give a right to demand or receive; to furnish with grounds for claiming, with a direct object of the person claiming, and a remote object of the thing claimed.' It is directly opposed to the idea of imposing an obligation or limitation, but gives to the person named a right to demand or receive."

In *Norton v. State*, 104 Wash. 248, 176 Pac. 347, the Supreme Court of the State of Washington said:

"We find few definitions of the word 'entitle'; but, so far as the courts have dealt with the word, it may be gathered that the word means the granting of a privilege or right to be exercised at the option of the party for whose benefit the word is used and upon which no limitation can be arbitrarily imposed."

The authorities quoted above are in agreement that the word "entitle" is not a permissive term or one of limitation but rather expresses the absolute granting of a privilege or right. Following this interpretation of "entitle" it is at once apparent that an applicant who fails to pass the examination in accountancy may, as a matter of right insist upon only one examination in accountancy in each year. However, such determination does not preclude the Board of Examiners in Accountancy, acting in conjunction with the University, from allowing the unsuccessful applicant to take more than one examination in a year, as a matter of consent by the Board and the University, rather than as a matter of right on the part of the applicant.

Section 3241.5, Revised Codes of Montana, 1935, is in part as follows:

"The Board of Examiners in Accountancy shall hold examinations at the University at Missoula, Montana, or at the State Capitol, in Helena, Montana, as often as in the opinion of the University shall be necessary, but in no event less frequently than once a year."

Thus, while providing absolutely for the one examination a year to which all applicants are entitled as a matter of right, the law also provides for other examinations as often as in the opinion of the University shall be necessary.

If the legislature had intended that a person who failed in the accountancy examination should not be allowed to take the examination again for the period of one year, it could have used much stronger language than that used in Section 3241.6, *supra*. The use of either of the phrases, "no applicant shall be given more than one examination in each year," or "no applicant shall be allowed more than one examination in each year" would have unconditionally limited the number of allowable examinations to one per year. The use of the phrase "shall not be entitled" does not in my opinion prevent the allowance by the proper authorities of more than one examination in a year.

It only provides that an applicant can insist upon only one examination per year as a matter of right. If the Board of Examiners in Accountancy together with the University Committee on Accountancy shall in their discretion wish to allow an applicant to take the examination more than once in a period of one year, they are free to do so.

Section 3241.4, Revised Codes of Montana, 1935, provides as follows:

"The University shall prescribe all useful and necessary rules and regulations for the conduct, character and scope of the examinations, the methods and time of filing applications therefor, and all other rules and regulations necessary or proper, fully to carry into effect the purposes of this act."

The provisions of the above quoted Section vest broad discretionary powers in the University relative to the making of regulations essential to the conducting of the examinations in accountancy. Such powers together with the right vested in the University to hold the examinations as often as shall be necessary are, in my opinion, more than adequate to enable the University and the Board of Examiners in Accountancy to allow an applicant to retake the examination in Accountancy in the same year in which he has previously failed the examination.

It is my opinion that an applicant who has failed in the examination in accountancy shall be entitled as a matter of right to only one examination in each year. The Board of Examiners in Accountancy and the University may, in the exercise of their discretion, allow an applicant who has failed to pass the examination in accountancy to retake the examination in the same year in which he has previously failed.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.