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1. CERTIFIED PUBLIC ACCOUNTANT—APPLICATION FOR ADMISSION TO EXAMINATION AND PERMISSION TO PRACTICE—ON FILE WITH STATE BOARD OF ACCOUNTANCY—PENDING PROCEEDING WITHIN MEANING OF SECTION 26 G. C.—HOUSE BILL 94, 97 GENERAL ASSEMBLY, WHICH AMENDED SECTION 1375 ET SEQ., G. C. CONTAINS NO EXPRESS PROVISIONS TO CONTRARY—SECTIONS IN FORCE AND EFFECT AT TIME APPLICATION FILED ARE CONTROLLING.

2. APPLICANT FOR CERTIFICATE AS CERTIFIED PUBLIC ACCOUNTANT WHO IS A NONRESIDENT OF STATE AND EMPLOYED WITHOUT STATE MAY IF APPROVED FOR EXAMINATION BY STATE BOARD OF ACCOUNTANCY PRIOR TO SEPTEMBER 26, 1947, BE ADMITTED TO EXAMINATIONS HELD SUBSEQUENT TO THAT DATE.

SYLLABUS:

1. An application for admission to examination and certificate to practice as a certified public accountant, on file with the State Board of Accountancy, is a pending proceeding within the meaning of Section 26 of the General Code, and, since House Bill No. 84 of the 97th General Assembly, under the terms of which Section 1373 et seq. of the General Code, were amended effective September 26, 1947, contains no express provisions to the contrary, said sections, as the same were in force and effect at the time of the filing of such application, are controlling in all matters concerned with and growing out of such filing.

2. An applicant for a certificate of licensure as a certified public accountant who is a non-resident of and employed without the State of Ohio may, if he was approved for examination by the State Board of Accountancy prior to September 26, 1947, be admitted to examinations held subsequent to said date.

3. An applicant for such certificate whose application, accompanied by an examination fee of \$25.00, was filed prior to September 26, 1947, is not required to pay an additional fee in order to take an examination and, if he fails in such examination, is entitled to be re-examined within a period of eighteen months from the date of his application without the payment of further fees.

Columbus, Ohio, October 8, 1947

State Board of Accountancy, State Office Building
Columbus, Ohio .

Gentlemen :

Your request for my opinion reads :

“On June 26, 1947 Governor Herbert approved House Bill No. 84 and within a few days it will become operative. The members of the State Board of Accountancy desire your advice concerning certain provisions of this law.

(1) Under Section 1373 only a person who is resident in Ohio or who has a place of business or is employed in this State is eligible to receive a certificate to practice as a Certified Public Accountant. What effect will this provision have upon those applicants who are non-resident and employed without the State but who have been approved for examination prior to the effective date of the new law, including many who have sat in the examinations but have not satisfactorily completed all of the subjects of the examination? If such persons are disqualified so as to be prevented from receiving certificates under the new law, will they be entitled to a refund of examination fees which they have paid in the past?

(2) Under Section 1375 of the new law the examination fee is fixed at \$35.00 whereas it was previously \$25.00. Does the increased rate apply to all applications pending on the effective date of the new law? In other words, if an applicant has paid a fee of \$25.00 under the old law and his application has been approved, must he now pay an additional fee of \$10.00 before taking the examination? In the case of reexamination of applicants who originally paid a fee of \$25.00, must a fee of \$35.00 be paid when such applicants are reexamined after the expiration of the eighteen-month period mentioned in Section 1375? I am assuming that no payment of any kind will be required where the reexamination occurs within the eighteen-month period even though the initial fee paid under the old law was \$25.00.”

On May 9, 1908 the 77th General Assembly passed an act titled “To establish an Ohio state board of accountancy for the regulation of the practice of the profession of public accounting” (99 O. L. 332). When the general statutes of Ohio were revised and consolidated in 1910 said

act became Sections 1370 to 1379, both inclusive, of the General Code. They remained in force as originally enacted and revised until June 12, 1947. On that date the 97th General Assembly passed House Bill No. 84 pursuant to which each of the aforementioned sections was amended to read as therein set forth. This bill was filed in the office of the Secretary of State on June 27, 1947 and hence said amendatory act became effective as a law on September 26, 1947.

Prior to amendment Section 1373, General Code, read as follows:

“A citizen of the United States or a person who has duly declared his intention to become such citizen, not less than twenty-one years of age, of good moral character, a graduate of a high-school or having received an equivalent education, with at least three years’ experience in the practice of accounting and who has received from the state board of accountancy as herein provided a certificate of his qualifications to practice as a public expert accountant shall be styled and known as a certified public accountant. No other person shall assume such title or use the abbreviation, ‘C. P. A.,’ or other words or letters to indicate that he is a certified public accountant.”

Prior to amendment Section 1374, General Code, provided in part that “Each year, the *state board of accountancy* shall hold an examination for such certificate.” In the section as amended the underscored words were omitted and except for such omission no change was made in the wording thereof.

Before amendment Section 1375, General Code, provided:

“At the time of filing the application for such examination and certificate, each applicant shall pay to the treasurer of the state board of accountancy a fee of twenty-five dollars. Such examination fee shall not be refunded, but an applicant may be re-examined without the payment of an additional fee within eighteen months from the date of his application.”

There will now be set forth Sections 1373 and 1375 as amended:

Section 1373.

“A citizen of the United States, who is a resident of this state or who has a place of business or is employed in this state, and who has attained the age of twenty-one years, and who is of good moral character, and who is a graduate of a high school or has received an equivalent education and has had at least three years’ experience in the practice of accounting and who has re-

ceived from the board as herein provided a certificate to practice as a certified public accountant and any person who at the effective date of this act holds a valid certificate to practice in Ohio as a certified public accountant, may hold himself out to the general public as a 'certified public accountant' and such person may, in connection with his name, use the abbreviation 'CPA.' No other person shall assume such title or use the abbreviation CPA or other words or letters to indicate that he is a certified public accountant."

Section 1375.

"At the time of filing the application for such examination and certificate, each applicant shall pay to the treasurer of the board a fee of thirty-five dollars. Such examination fee shall not be refunded, but an applicant may be reexamined without the payment of an additional fee within eighteen months from the date of his application."

The principal question presented by your inquiry is whether an application that was filed with you prior to the effective date of House Bill No. 84 constitutes a *pending proceeding*. While your approval of such application may be a condition precedent to being admitted to an examination it is the date of the filing thereof that is of paramount importance rather than date of approval. Before discussing what is sufficient to constitute a "pending proceeding" I direct your attention to Section 26, General Code, which provides:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

In *State, ex rel. Andrews v. Zangerle, Auditor*, 101 O. S. 235 it is held that Section 26, General Code, is a rule of legislative interpretation and is to be construed as a part of any amended act, unless such amendment otherwise expressly provides. The courts of this state have been quite liberal in their views as to what shall be regarded as a "pending proceeding." The cases now set forth deal with that subject.

In *State, ex rel. The Cleveland Ry. Co. v. Atkinson, Admr.*, 138 O. S. 157, the first branch of the syllabus reads:

"1. An undisposed of application for a determination as to seasonal or casual employment, filed by an employer with the Unemployment Compensation Commission (created under the original act passed to establish a system of unemployment insurance, Section 1345-1 et seq., General Code, 116 Ohio Laws, part 2, 286), is a pending proceeding within the meaning of Section 26, General Code."

In *State, ex rel. Thompson, v. Industrial Commission*, 138 O. S. 439 the second branch of the syllabus reads:

"2. The filing of an application for compensation constitutes the commencement of a proceeding and the subsequent filing therein of an application for modification of a former finding and order or for additional compensation is but a step in a proceeding that is pending within the meaning of Section 26, General Code."

In *Stough v. Industrial Commission*, 142 O. S. 446, the second branch of the syllabus reads:

"2. The filing of an application for compensation with the Industrial Commission constitutes the commencement of a proceeding within the meaning of Section 26, General Code, and all acts subsequent thereto are but steps in such pending proceeding. (*Industrial Commission v. Vail*, 110 Ohio St., 304, and *State ex rel. Thompson v. Industrial Commission*, 138 Ohio St., 439, approved and followed.)"

In *Kordes v. Fox*, 9 O. L. A. 530 the syllabus reads:

"Application made by county commissioners to Director of Highways for state aid upon an improvement, and his acceptance thereof, made the project a pending proceeding within the terms of 26 G. C., even though no further action was taken until nineteen months later."

Attention might also be called to *City of Toledo v. Jenkins*, 143 O. S. 141 wherein the filing of an application for the exemption of property from taxation was held to constitute the institution of a pending proceeding. In *Finkelman v. Evatt*, 24 O. O. 121, the Board of Tax Appeals held that a tax assessment made by an authorized officer against a particular taxpayer was a pending proceeding.

While I shall not here attempt to formulate any definition of a "pending proceeding" it would appear that the commencement of a matter which

can be the subject of judicial review falls within the meaning of those words. A person who files an application with you does so with a view to being admitted to examinations. The rejection of the application would, therefore, be an adjudication from which an appeal would lie to a judicial body. In this connection it becomes necessary to refer to the Administrative Procedure Act of this state which is contained in Section 154-61 to 154-74, both inclusive, of the General Code.

Section 154-62, General Code, defines various words as used in the aforementioned act. The definition of "agency" as found therein is somewhat lengthy and hence will not be set forth. I think it is beyond dispute that the State Board of Accountancy is an administrative agency and therefore as such is subject to compliance with said act. The word "adjudication" is also defined in said Section 154-62, to-wit:

"'Adjudication' means and includes the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits or legal relationships of a specified person or persons, but does not include the issuance of a license in response to an application with respect to which no question is raised nor other acts of ministerial nature."

Section 154-67, General Code, provides that no adjudication order of an agency shall be valid unless said agency is specifically authorized by law to make such order. It is also provided therein that:

"Every agency shall afford a hearing upon the request of any person who has been refused admission to an examination where such examination is a prerequisite to the issuance of a license unless a hearing was held prior to such refusal."

By virtue of Section 154-73, General Code, an appeal may be perfected from an adjudication of an agency denying an application for admission to an examination. In so far as pertinent said section reads:

"Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination or denying the issuance or renewal of a license, registration of a licensee, or revoking or suspending a license, may appeal to the common pleas court of the county in which the place of business of the licensee is located or the county in which the licensee is a resident from the order of said agency, provided, however, that appeals from decisions of the board of liquor control shall be to the court of common pleas of Franklin county only. If any such party is not a resident of and has no place

of business in Ohio he may appeal to the common pleas court of Franklin county.”

As has just been demonstrated, the action of an agency in denying an applicant admission to an examination may be appealed to a judicial body. Hence it must reasonably be concluded that the filing of an application for examination constitutes the institution of a pending proceeding. By reason of Section 26, General Code, the repeal or amendment of a statute shall in no manner affect pending proceedings.

An answer to your first question will serve in part as an answer to your second question. However, in said second question you inquire as to the situation when a person seeks to be examined after the expiration of the eighteen-month period that is mentioned in Section 1375, General Code, both before and after amendment. I have not been advised as to whether, after a person has been examined and then re-examined within such eighteen-month period, a *new application* is required before another examination will be given. As I view it, under the statutes before their recent amendment, a new application would have to be filed.

The obvious purpose of an application is to obtain certain information relative to the qualifications, etc., of a person in order to determine whether he is legally entitled to take an examination. It is quite logical to conclude that additional facts and circumstances would have some direct bearing on the matter of qualification. Hence it seems to me that the statutes here under consideration, both prior to amendment and as amended, contemplate that an applicant who seeks to be examined after the expiration of the eighteen-month period heretofore mentioned, is required, in addition to paying a new examination fee, to make a new application. It could reasonably be said that disposition had been made of the first application.

Therefore, as to this phase of your second question, it is my view that, in the case of a second application, the law in force and effect at the time of the filing of the same would be controlling. While I appreciate that this might, in some instances, preclude a person who was able to meet the statutory requirements before amendment being unable to meet the same after amendment, I cannot bring myself to the point of believing that Section 26, General Code, would prevent the law as amended from being applicable to such person under the conditions just set forth.

In specific answer to your questions it is therefore my opinion :

1. An applicant for a certificate of licensure as a certified public accountant who is a non-resident of and employed without the State of Ohio may, if he was approved for examination by the State Board of Accountancy prior to September 26, 1947, be admitted to examinations held subsequent to said date.

2. An applicant for such certificate whose application, accompanied by an examination fee of \$25.00, was filed prior to September 26, 1947, is not required to pay an additional fee in order to take an examination and, if he fails in such examination, is entitled to be re-examined within a period of eighteen months from the date of his application without the payment of further fees.

Respectfully,

HUGH S. JENKINS,
Attorney General.