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1. CERTIFIED PUBLIC ACCOUNTANT — APPLICANT FOR CERTIFICATE TO PRACTICE AS PUBLIC EXPERT ACCOUNTANT — OHIO STATE BOARD OF ACCOUNTANCY HAS SOUND DISCRETION TO DETERMINE IF SUCH APPLICANT IS OF GOOD MORAL CHARACTER.
2. APPLICANT WHO SEEKS RE-EXAMINATION MORE THAN EIGHTEEN MONTHS AFTER DATE OF APPLICATION MUST PAY FEE, \$25.00.
3. SAID BOARD WITHOUT AUTHORITY TO EXTEND EIGHTEEN MONTH LIMITATION — SECTION 1375 GENERAL CODE.

## SYLLABUS:

1. *Taking into consideration all material facts submitted, the determination of whether an applicant for a certificate to practice as a public expert accountant is of good moral character rests in the sound discretion of the Ohio State Board of Accountancy.*

2. *An applicant for a certificate to practice as a public expert accountant who seeks re-examination more than eighteen months after the date of his application must pay a fee of \$25.00 to the Treasurer of the Ohio State Board of Accountancy as provided by Section 1375, General Code.*

3. *The Ohio State Board of Accountancy is without authority to extend the eighteen month limitation for re-examination prescribed by Section 1375, General Code.*

Columbus, Ohio, October 21, 1941.

Mr. Harry W. Cuthbertson, Secretary-Treasurer,  
Ohio State Board of Accountancy, State Office Building,  
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

“In the absence of provisions in Sections 1370 to 1379 and 13176 of the Ohio General Code pertaining to the Ohio State Board of Accountancy covering the following case, we respectfully request your opinion.

An applicant for the C.P.A. examination, prior to submitting an application, was convicted of perjury and served several months in a federal penitentiary. At the expiration of his sentence, he received a pardon and his rights of citizenship were fully restored in a document over the signature of Hon. Herbert Hoover, then President of the United States. Since that time the applicant has been employed and has qualified for a surety bond. The question is: Shall persons convicted for an offense of this kind be considered of such moral character as to preclude them from sitting for a C.P.A. examination?

Also Section 1375 provides for an applicant who fails to pass the examination to be re-examined without the payment of an additional fee within eighteen months from the date of his application. The question is: May the Ohio State Board of Accountancy waive this requirement, if an applicant is prevented from presenting himself at an examination within the eighteen month period because of service in the Army, Navy or Marine Corps?”

Your first question is concerned with Section 1373, General Code, wherein are contained certain requirements which an applicant must meet in order to practice as a public expert accountant. Said section provides 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, 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.”

It will be observed that one of the requirements is that the applicant be of good moral character. In view of this provision you inquire whether

one convicted of perjury and later pardoned by the President of the United States may be said to possess the good moral character required by Section 1373, *supra*.

At the outset it must be borne in mind that character and reputation are not synonymous. As stated in the case of *In Re Spenser*, 22 Fed. Cas. 921:

“ \* \* \* Character consists of the qualities which constitute the individual; reputation the sum of opinions entertained concerning him. The former is interior, the latter external. The one is the substance, the other the shadow.”

In the instant statute we are concerned not with reputation, but rather with character, i.e., “what a person really is and not what he is supposed to be” (*In Re Copozzi*, 289 N.Y. Sup. 869, 872).

More particularly we must inquire into the meaning of “good moral character.” That expression is difficult of definition. The difficulty arises by reason of changing conditions and divergence of standards in society. Nevertheless, courts and textwriters have attempted to define that expression as exemplified below. In the case of *In Re Hopp*, 179 Fed. 561, at page 563, it was defined by the court as follows:

“ \* \* \* A good moral character is one that measures up as good among the people of the community in which the party lives; that is, up to the standard of the average citizen. Ordinary care is the test of liability in every case of negligence. This standard is arrived at, not by the overcautious or the reckless man, but by the average man, representing the great mass of men. So here, where the law says a good moral character, it means such a reputation as will pass muster with the average man. It need not rise above the level of the common mass of people.”

The federal naturalization laws require applicants to show they have “behaved as a man of good moral character.” Construing this phrase in *In Re Spenser*, *supra*, the court said at page 921 as follows:

“What is ‘a good moral character’ within the meaning of the statute may not be easy of determination in all cases. The standard may vary from one generation to another, and probably the average man of the country is as high as it can be set. In one age and country duelling, drinking and gaming are considered

immoral, and in another they are regarded as very venial sins at most. \* \* \*

Upon general principles it would seem that whatever is forbidden by the law of the land ought to be considered, for the time being, immoral, within the purview of this statute."

In 14 C.J.S. 400, the following is said concerning "good moral character":

"The words are general in their application but they include all the elements essential to make up such a character; among these are common honesty and veracity, especially in all professional intercourse, although it has been held that the highest degree of moral excellence is not required; and the term has been defined as meaning a character that measures up as good among the people of the community in which the person lives, or that is up to the standard of the average citizen; that status which attaches to a man of good behavior and upright conduct."

Having in mind the foregoing, let us consider whether one who has been convicted of perjury may meet the character requirement of Section 1373, supra. Perjury, of course, is a crime in Ohio punishable upon conviction by sentence in the penitentiary (Section 12842, General Code). In the Spenser case, supra, the court took a very definite stand in this regard as evidenced on page 922 of the opinion:

"But perjury is not only *malum prohibitum* but *malum in se*. At both the civil and common law it was classed among the *crimina falsi*, and wherever, as in this case, it affected the administration of justice, by introducing falsehood and fraud therein, it was, at common law, deemed infamous, and the person committing it held incompetent as a witness and unworthy of credit. *U.S. v. Block* (Case No. 14609).

There can be no question, then, but that a person who commits perjury has so far behaved as a man of bad moral character. But it may be said that an alien who has otherwise behaved as a man of good moral character during a residence in the country of at least five years, ought not to be denied admission to citizenship on account of the commission in that time of a single illegal or immoral act. This suggestion is based upon the idea that it is sufficient if the behavior of the applicant was generally good — that the good preponderated over the evil. In some sense this may be correct. \* \* \* But in the case of murder, robbery, theft, bribery, or perjury it seems to me that a single instance of the commission of either of them is enough to prevent the admission."

Whether your Board desires to adopt the above expression, of course, rests within its sound discretion. In creating the State Board of Accountancy, the Legislature empowered it to license applicants who meet the statutory requirements. The function of the Board in this respect is similar to that exercised by a federal court in naturalization cases as expressed in the case of *In Re Ross*, 188 Fed. 685, as follows:

“ \* \* \* It is the duty of the court to determine, taking into account the whole career and conduct of the applicant, in so far as it is made to appear, whether such a one possesses the necessary qualifications, moral and otherwise, to entitle him to the rights of citizenship.”

In like manner, we feel it is the duty of your Board to determine from all the facts whether an applicant possesses the necessary statutory requirements, including good moral character, to be licensed as a certified public accountant. Such determination is peculiarly the Board's and may only be made by it. In the absence of a gross abuse of discretion it may be pointed out that a judicial tribunal would not disturb the Board's finding.

Before leaving this topic, I deem it proper to point out what some courts have said with respect to the effect of a pardon. Reference to the three authorities below should prove adequate in this regard:

*In Re Addis*, 252 Fed. 886, 887:

“I am of the opinion that the commission of an offense against the United States, which by the Criminal Code is declared to be a felony, precludes the offender from claiming successfully that he has behaved as a man well disposed to the good order and happiness of the same. While a pardon releases the punishment and blots out the existence of guilt, it does not obliterate the fact that the applicant has not behaved as one well disposed to the good order and happiness of the United States.”

*In Re Copozzi*, 289 N.Y. Sup. 869, 874:

“Too much reliance should not be placed upon the fact that a pardon has been granted. A pardon lacks the cleansing powers of baptism. It never seems to efface the stigma of conviction.”

*In Re Spenser*, 22 Fed. Cas. 921, 922:

“The effect of the pardon is prospective and not retrospective. It removes the guilt and restores the party to a state of innocence. But it does not change the past and can not annihilate the established fact that he was guilty of the offense.

\* \* \* By the commission of the crime the applicant was guilty of misbehavior, within the meaning of the statute, during his residence in the United States. The pardon has absolved him from the guilt of the act and relieved him from the legal disabilities consequent thereupon. But it has not done away with the fact of his conviction. It does not operate retrospectively. The answer to the question: Has he behaved as a man of good moral character? must still be in the negative; for the fact remains, notwithstanding the pardon, that the applicant was guilty of the crime of perjury — did behave otherwise than as a man of good moral character.”

It certainly can not be denied that many persons who have never been convicted of crime are not of good moral character, and on the other hand, it might safely be said that a man who has been convicted of a felony might nevertheless, even though not pardoned, be of good moral character.

It appears to me, therefore, that whether or not the applicant in question is of good moral character can not be answered categorically as a matter of law.

As stated above, such determination rests within the sound discretion of your Board and should be made upon consideration of all the material facts submitted, including the conduct of the applicant in question, both prior and subsequent to his pardon.

Turning now to your second question, your attention is directed to Section 1375, General Code, referred to in your inquiry. Said section provides:

“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 payment of an additional fee within eighteen months from the date of his application.”

The language of this section is clear and unambiguous. Under the

accepted rules of statutory construction, therefore, no interpretation is necessary. By its terms the Legislature has seen fit to permit unsuccessful applicants to be re-examined within a period of eighteen months from date of application without payment of an additional fee. The right to take the examination is not an inherent one. The Legislature could have required the payment of an additional entrance fee to each examination. It must follow, therefore, that one desiring to avail himself of the provisions of Section 1375, supra, with respect to re-examination, must do so within the time limitation of eighteen months therein prescribed.

Being a creature of the Legislature, the Board has only those powers expressly granted or necessarily implied from the express grants. An examination of the statutes under which your Board operates (Sections 1370 to 1379, inclusive, General Code), fails to disclose any power, either express or implied, in your Board to waive any requirements or limitations prescribed by law with respect to examination. Such being the case, I am constrained to the view that an applicant who seeks re-examination more than eighteen months after the date of his application must pay a fee of Twenty-Five Dollars (\$25.00) as provided by Section 1375, supra. Further, it is my opinion that the Board is without authority to extend the eighteen month limitation prescribed in said section. I am cognizant of the hardship which will result from the above holding as regards one serving in the armed forces of the United States. The power to correct that situation rests exclusively with the Legislature. The Attorney General may not usurp the functions of the legislative arm of the government by supplying apparent deficiencies in a statute.

Respectfully,

THOMAS J. HERBERT,

Attorney General.