

port 75 O. S. 574, it was held that the various statutory steps required for the improvement of a street constitute a "proceeding" within the meaning of Section 79, Revised Statutes (now Section 26, General Code), and that the adoption of a preliminary resolution of necessity is the beginning of a "proceeding" which is thereafter "pending" within the meaning of the statute and is unaffected by an act not expressly retroactive. In the case of *State, ex rel. vs. Zangerle*, 101 O. S. 235, it was held that a resolution declaring for a county road improvement or fixing the assessment therefor, is a "proceeding" within the meaning of Section 26, *supra*.

In an opinion of this office, appearing in Opinions of the Attorney General for 1927, Vol. II, p. 1357, it was held that a proceeding was pending within the meaning of Section 26 when a board of county commissioners makes application for state aid under the then provisions of Section 1191, General Code. Similar opinions appear in Opinions of the Attorney General for 1928, Vol. II, pp. 971, 1382, 1451, and Vol. III, p. 1921.

In view of the foregoing, I am inclined to the view that the proceedings for the issuance of these bonds became pending within the meaning of Section 26, General Code, upon July 18, 1929, upon the passage of the resolution required by Section 2293-19, declaring the necessity of the issue, and that, therefore, since the effective date of the repeal of Section 5654-1, General Code, was July 26, 1929, the provisions of this section should have been complied with. The transcript failing to show such compliance, I advise you not to purchase these bonds.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1736.

ACCOUNTANCY BOARD—MAY NOT REFUSE CERTIFIED PUBLIC ACCOUNTANT OF FOREIGN STATE THE C. P. A. DEGREE ON GROUND THAT HE IS NOT A RESIDENT OF OHIO.

SYLLABUS:

Under Section 1376 of the General Code of Ohio, the State Board of Accountancy has no authority by administrative regulation or otherwise to refuse a Certified Public Accountant of another state applying therefor the certificate of this state as a Certified Public Accountant for no other reason than that he is not a resident of the State of Ohio.

COLUMBUS, OHIO, April 5, 1930.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge receipt of your communication which reads as follows:

"Will you be good enough to give me an opinion with reference to Section 1376 (99 v. 333 No. 6) as to whether an applicant from Pennsylvania must be a resident of Ohio to receive the C. P. A. degree in Ohio under the above named section?"

It appears that a resident of Pennsylvania, who received the degree of C. P. A. from the State of Pennsylvania as the result of a written examination given by the State Board of Pennsylvania has made application to the State Board of Accountancy of Ohio for the C. P. A. degree in Ohio. This board

has refused to grant the applicant the C. P. A. degree for the reason that the applicant is not a resident of Ohio.

The said applicant was born and lived in Ohio for more than twenty-one years, however, at the time said applicant took the examination he was and is now a resident of Pennsylvania."

As I do not have before me the papers or a transcript thereof showing the proceedings leading up to the refusal by the State Board of Accountancy to grant a certificate as a Certified Public Accountant to the person referred to in your communication, I will not attempt to render any opinion as to the right of the State Board of Accountancy to refuse the said certificate. I will confine my opinion, therefore, to the abstract question whether a non-resident of the State of Ohio, who holds a certificate as a Certified Public Accountant, issued under authority of another state, can be refused a certificate as a Certified Public Accountant by the State Board of Accountancy of Ohio for the sole reason that the applicant is not a resident of the State of Ohio.

The answer to this question involves a consideration of Section 1376 of the General Code of Ohio (99 O. L. 333 §6), which provides as follows :

"A person who is a citizen of the United States or has declared his intention of becoming such citizen, who is at least twenty-one years of age, of good moral character, who has complied with the rules and regulations of the State Board of Accountancy, and who holds a valid and unrevoked certificate as a certified public accountant issued under the authority of another state or territory of the United States or the District of Columbia, or of a foreign nation, may receive from the board a certificate as a certified public accountant if the board is satisfied that the standards and requirements for a certificate as a certified public accountant thereof are substantially equivalent to those established by this chapter. Such person may thereafter practice in this state as a certified public accountant and assume and use the name, title and style of 'certified public accountant' or any abbreviation or abbreviations thereof."

It will be noted that the Legislature has made specific provision as to the qualifications of applicants for the certificate as a Certified Public Accountant in reference to citizenship. Citizenship is not necessarily inclusive of the term residence. It would appear, however, from an examination of all of the provisions of the General Code relative to this question, that it was the legislative intent to make this provision in Section 1376 of the General Code, supra, inclusive of all other regulations relative to citizenship or residence.

Section 1373 of the General Code of Ohio governs the qualification of applicants for a certificate as a Certified Public Accountant, who shall obtain the right to said certificate by examination. The provision of that section in reference to citizenship is identical with the analogous provision of Section 1376 of the General Code, supra.

The provision of Section 1376, providing that a person making application for a certificate as a Certified Public Accountant in pursuance of that section shall comply with the rules and regulations of the State Board of Accountancy, makes my conclusion on the question asked in your communication of some difficulty. Nowhere in Chapter 26 of the General Code, covering the powers and duties of the State Board of Accountancy, or elsewhere, do I find any express authority empowering the State Board of Accountancy to make any regulations governing the qualifications of those who shall apply for a certificate as a Certified Public Accountant. Such power, however, to pass rules and regulations to aid the State Board of Accountancy in performing its functions is to be clearly implied from the express powers granted

in Section 1376 of the General Code. The rules and regulations passed by such board must be strictly confined to the apparent purpose of Chapter 26 of the General Code of Ohio and may not conflict with the rules and regulations included within this act by the Legislature.

The State Board of Accountancy is purely an administrative board to which the Legislature has extended rule-making powers. It has been held that the exercise of such power here referred to, granted in Section 1376 of the General Code, *supra*, is not the exercise of delegated legislative power, but is the exercise of the power to make administrative rules. *Green vs. State Civil Service Commission*, et al., 90 O. S. 252. In this case it was held that the enactment of such a provision was strictly within the purview of the power of the Legislature as defined in the Constitution of Ohio.

A power may not rise higher than its source, and it could not be held that the State Board of Accountancy could pass a regulation requiring an applicant for a certificate as a Certified Public Accountant, as a condition precedent to receiving the same, to be a resident of the State of Ohio, in conflict with the intent of the Legislature as to what qualifications in this respect the applicant should have, as shown by the express provisions of Section 1376 and other sections of the General Code.

The Legislature of Ohio authorized the creation of the State Board of Accountancy, composed of members of that profession "skilled in the knowledge and practice of accounting." The function of this board, as shown by the provisions of Chapter 26 of the General Code, is to determine by examination and other reasonable means if the applicants for the privilege of using the title "Certified Public Accountant" in the State of Ohio are adequately trained and able to practice that profession to the end that the use of the title should not be a deception or a fraud on the public. Having determined the general intent of the Legislature in the enactment of this chapter, it is necessary to harmonize the subordinate provisions thereof in accordance with that intent. *Sutherland on Statutory Construction*, Vol. 2, Section 368.

It is clear that the State Board of Accountancy of Ohio, under the provisions of Section 1376 of the General Code of Ohio, *supra*, intended to pass certain regulations by which the board could determine with certainty that a Certified Public Accountant of another state, who was applying for the privilege of using a like title in this state, had the qualifications prescribed by Section 1376, General Code, and by which the administrative duties of said board in obtaining information relative thereto could be efficiently performed. The grant cannot be implied to authorize regulations to limit or nullify other provisions of Section 1376 of the General Code, *supra*.

Based on the foregoing, and in specific answer to your inquiry, I am of the opinion that under Section 1376 of the General Code of Ohio, the State Board of Accountancy has no authority, by administrative regulation or otherwise, to refuse a Certified Public Accountant of another state applying therefor the certificate of this state as a Certified Public Accountant for no other reason than that he is not a resident of the State of Ohio.

Respectfully,
GILBERT BETTMAN,
Attorney General.