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INTRODUCTION

The past year has seen a further cementing of the relations of CPAs and lawyers and considerable progress toward showing the respect of each for the competence of the other profession. This time a year ago, committees of the Institute and of the Bar were formulating a joint statement to serve as a basis for developing cooperative machinery and reactivating the National Conference of Lawyers and Certified Public Accountants.

You will recall that the National Conference was formed in 1944 to develop a basis for settling differences between the two professions by friendly negotiation rather than by litigation or legislation. The Bercu and Conway cases were heard in the courts during the time that the basis was being sought; the irritation provoked by these cases slowed the negotiations. In 1951, however, both the Institute and the American Bar Association approved a Statement of Principles stressing the importance of voluntary cooperation between the members of the two professions in tax practice. As you know, the Statement recognized that lawyers and CPAs were members of professions whose services are necessarily sought by business. It recognized that legal implications and accounting aspects of business problems are separate, but often so interrelated that they are difficult, if not impossible, to distinguish. The Statement recognized the rights both of lawyers and of CPAs to prepare federal income tax returns, to practice before the Treasury Department, and to render advice in federal income tax matters. It stressed the common responsibility of the members of the two professions to recommend to their clients that the services of a member of the other profession be engaged when the circumstances clearly and reasonably call for knowledge and competence characteristic of the other profession. I stress this because these concepts undergird the structure for cooperation that presently is being formed.

THE AGRAN DECISION

From 1951 until 1954, when the Agran case was first decided in a

Los Angeles court, there was comparative calm. The Agran decision triggered a series of events which led to some rather difficult negotiations between the two professions.

In effect, it seemed that the Agran decision – if upheld at higher levels – might prevent certified public accountants from representing clients before the Treasury Department despite the Treasury's authorization to do so.

INTERPRETATION OF CIRCULAR 230

Evidently disturbed by this turn of events, the Treasury Department in January 1956 restated its right to determine the proper scope of practice by its enrolled agents. At the same time, it noted that uniform interpretation and administration of the provisions of Circular 230 are essential if practice before the Department is to be equitably administered.

The Treasury also reaffirmed its intention to permit all persons enrolled to practice before it to represent their clients fully before the Department and saw no reason to change the scope of practice despite the Agran decision.

Also, it admonished the members of each profession to accept the responsibility of deciding when the other should be brought in, and said it would consider the need for amending Circular 230 if enrolled agents and attorneys did not respect the field of competence of one another. This was tantamount to the Department's saying we had better get our professional houses in order.

DEVELOPMENT OF JOINT REPORT

The Treasury statement eased many of the difficult matters of negotiation which had occupied the time of committees representing the two professions during 1955. During most of 1956 the Institute Committee on Relations with Bar was working with Bar representatives on a joint report to the members of the parent bodies. The report was approved by the cooperating committees in December 1956. A pamphlet containing the joint report, the Treasury Department interpretation of Circular 230, and the 1951 Statement of Principles was distributed to the membership of the Institute in January this year.

The substance of the joint report was that the public interest as well as the interests of both professions would be best served by expansion of voluntary machinery for self-discipline by the professions and by

cooperation between them to enable differences between lawyers and CPAs as they may arise – whether in tax practice or elsewhere – to be resolved by conference and negotiation, and not by litigation. It recommended that the National Conference of Lawyers and CPAs, presently composed of members of the two committees, be reactivated to achieve these ends.

Further, the report affirmed the 1951 Statement of Principles as a guide to cooperation and not as a definition of the practice of law or of the practice of accounting. It suggested that the professions in each state consider the desirability of forming a joint committee similar to the National Conference. It encouraged local organizations of the two professions to refer disputes between members of the two professions to the joint committee at the state level, or to the National Conference. The committees cooperating in drafting the report foresaw that resolution of specific cases would furnish a body of precedent to guide the members of their professions and, accordingly, recommended that the National Conference participate, at least for a time, in the consideration and settlement of disputes that are likely to serve as guides and precedents for other cases.

STATE MACHINERY

It seems to me that the state professional organizations should move along expeditiously in establishing joint committees. If relations are strained, because of some local incident, it may not be desirable to formulate joint machinery as long as the condition persists. Unless the joint committee and its plan of operation are developed in an atmosphere of mutual respect, success is not likely to result. An attempt to set up joint machinery when relations are strained is apt to be viewed as an effort to deal with a particular source of irritation, rather than as an enduring means of cooperation. I think that uniformity of principle, among the states and at the national level, is vital and that reasonable uniformity in method is desirable.

SPECIFIC PROBLEMS

The attention of the National Conference has been directed to several specific problems during the last year. Early in the year, the Board of Bar Commissioners of the Kentucky State Bar Association confirmed an opinion of its committee on Unauthorized Practice of Law, declaring

that preparation of income tax returns for compensation constitutes the practice of law, and requested the Kentucky Court of Appeals also to confirm the opinion. The consensus of the reactivated National Conference at its first meeting in February was that the action of the Kentucky Bar was contrary to the 1951 Statement of Principles and to the joint report approved in December 1956. The Bar Association representatives on the National Conference were commissioned to deal with this matter either by conference with the Kentucky Bar or by filing a statement with the Court of Appeals in Kentucky. Subsequently, the Kentucky Board withdrew its petition. Timely attention to this problem by the National Conference aided in avoiding what could have been a bad situation.

A matter of great concern to CPAs has been the Federal Administrative Practice Reorganization Bill of 1957 (H.R. 3350), which was drafted by a special committee of the American Bar Association and introduced into the recent session of Congress without affording Institute representatives an opportunity to review it and to offer suggestions, as expected. The Bill as introduced obviously must be opposed by the Institute since it could well nullify the statement of the Secretary of the Treasury issued in January 1956 interpreting Section 10.2 of Circular 230 and might well jeopardize the practice of certified public accountants in taxes as well as in other fields.

Following the introduction of the Federal Administrative Practice Reorganization Bill of 1957, the Executive Committee of the Institute appointed a special task force to oppose such legislation. In a meeting of the National Conference, the Institute representatives expressed disappointment that the Bill had been introduced without prior notice and consultation with them. Bar Association representatives pointed out that the special drafting committee was limited in its authority by the substance of a resolution adopted by the House of Delegates of the American Bar Association in February 1956. Support of this legislation by the Bar Association could create a considerable strain upon the efforts of the National Conference to settle disputes amicably.

The National Conference has discussed at some length the procedures to be followed by the Conference in dealing with threatened litigation. It had before it at one meeting certain information relating to a fee suit by a CPA in which attorneys for the defense had expressed an intention to raise the issue of unauthorized practice of law. This case, although not formally under consideration by the Conference, served as an example in considering procedures to be followed. This particular case was settled before going to trial.

Institute representatives to the National Conference have been following developments in a fee suit instituted last year by another CPA. The dispute had not come to their attention earlier apparently because the plaintiff regarded any allegation of unauthorized practice of law as out of the question – a contention the attorney for the defense has since given notice he will make. Efforts have been directed toward bringing about a settlement through representatives at the state level before the matter is brought to trial.

Thus, the first steps have been taken at the national level to set in motion the machinery of cooperation. In my view, the two professions are at the gateway of what can be a new productive era in interprofessional cooperation.

MUTUAL UNDERSTANDING

The key to success in achieving our goal of interprofessional cooperation lies, in my opinion, in continuing awareness both by certified public accountants and by lawyers of the circumstances in which their clients should be encouraged to engage a member of the other profession.

Difficulties generally develop in the "gray area" – in fixing the point where the area of accountancy stops and where the area of law begins.

If in every situation it were practicable for a lawyer and a certified public accountant to act jointly, there would be little difficulty. But in the vast majority of tax situations no significant legal or accounting questions are raised. These can be handled satisfactorily by a member of either profession who is competent in the field of federal income taxation. In such matters, consideration of the public interest could not justify our insisting that the taxpayer employ a member of each profession. The client must be permitted to make a free choice. Once this is done, it is the responsibility of the practitioner first engaged to seek the aid of a member of the other profession when he encounters a problem outside his own professional competence.

Here, it seems to me, is an area in which interprofessional education and the experience of professional associations in resolving borderline cases can be helpful. Basically, however, and certainly until criteria are formulated for identifying these circumstances, we must rely almost entirely upon the professional integrity and good judgment of the practitioner.

Solicitation of the advice of a member of the other profession should, of course, be timely. In some instances, if it is obtained too late, the client

may incur an unnecessary cost; in others, valuable time may be lost; in still others, the client might take an undesirable action that could have been avoided or might fail to act when a benefit could have been realized. In other circumstances, if the services of a member of the other profession are engaged too early, the client may incur unnecessary cost. Generally speaking, there is no reason why it should be necessary to call in a member of the other profession at the outset of a discussion of a problem, while it is still in an exploratory stage and so long as definite action has not been taken on a proposal. All of us, I am sure, learn to recognize the moment when it is wise to call in a lawyer.

AVOIDING DISPUTES

CPAs must shoulder a fair share of the responsibility for preventing disputes by removing their causes. There are two ways of doing this. The first, of course, is to undertake engagements only if they are within the limits of our competence. The second is to broaden understanding among our lawyer acquaintances of the nature of the work of accountants.

Accountants, unfortunately, have not completely dispelled the public's concept of a CPA as one who deals only with facts; and this concept probably is held by a substantial segment of the legal fraternity. CPAs, as individuals and in groups, should tell the story that figures are simply the symbols, the language, and that the way they are put together and labeled rests on a broad base of judgment.

We should demonstrate our resolution to practice accounting, not law; and insist that lawyers practice law, not accounting. Sometimes it is not the substance of things done so much as the manner of the doing which leads to false impressions among our two professions about motives and purposes. For example, various Bar representatives frequently refer to the fact that there are lawyers on the staffs of some accounting firms and it is natural for them to assume that they practice as lawyers. This is disturbing to members of the Bar.

I can understand this concern, even though I recognize it generally as a misconception. I am sure that the typical accounting firm, even though it may employ lawyers, uses them only as accountants and employs only those who desire to become CPAs. I can see no justification for employment of lawyers by an accounting firm to render legal services to clients. The strength of an accounting firm, large or small, stems from the pyramided qualities and abilities of its juniors, seniors, principals,

and partners. Unless a partner can supervise every service undertaken by the men on his staff and add his extra bit of ability to theirs, there is a dilution of the competence that the public should be privileged to expect the firm to possess. In my opinion, it is not in the public interest that an accounting firm or a law firm engage an individual to serve clients in the capacity of a member of the other profession.

CONCLUSION

The National Conference of Lawyers and CPAs has been re-activated with the avowed objective of avoiding litigation between members of our two professions and settling any differences which may arise by voluntary cooperation. The Treasury Department has made it clear that this is what it wants our two professions to do, and I have not the slightest doubt that this is what our clients want us to do. I can assure you that the Institute representatives, with due concern for the public interest and our profession, will do their utmost to achieve that objective, as well as our own unwritten objective of positive cooperation between our two professions.