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Professional No-Man's Land - Where Law and Accounting Meet

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NOTES

PROFESSIONAL NO-MAN'S LAND — WHERE LAW AND ACCOUNTING MEET

The point at which the practice of accounting ends, and the practice of law begins has long been a subject of controversy.[1] The conflict appears to center on tax matters.[2] Presently a truce exists based upon a "Statement of Principles Relating to Practice in the Field of Federal Income Taxation"[3] promulgated by the National Conference of Lawyers and Certified Public Accountants. The "Statement of Principles" has been adopted by both the American Bar Association (A. B. A.)[4] and the American Institute of Accountants (A. I. A.).[5] This "Statement" calls for cooperation between the members of the two professions.[6] Such cooperation is generally extended in practice,[7] but there is no doubt that a difference of opinion does exist between the two professions regarding what acts an accountant is entitled to perform.[8] Any work in the field of taxation necessarily requires a knowledge of statutes, court decisions, and Treasury Rulings.[9] Taxation cannot be separated from the law; it is not *sui generis* as some accountants contend.[10]

The courts have declined to establish definite boundaries beyond which accountants may not go.[11] An accountant or an accounting firm may perform their private legal matters as may any other indi-

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1. Carey, *Ethics, Unauthorized Practice, and Federal Income Taxation — An Accountant's Viewpoint*, 25 Rocky Mt. L. Rev. 435, 437 (1953); Griswold, *A Further Look: Lawyers and Accountants*, 41 A.B.A.J. 1113 (1955).

2. There are three major decisions on the tax controversy. Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954); Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788 (1951); Application of N. Y. County Lawyer's Ass'n, 273 App. Div. 524, 78 N.Y.S.2d 209 (1958), *aff'd sub nom. In re* Bercu, 299 N.Y. 728, 87 N.E.2d 451 (1949).

3. 76 A.B.A. Rep. 280, 283-285 (1951).

4. *Id.* at 283.

5. *Id.* at 283-285.

6. *Id.* at 285, ". . . Conclusion . . . The principal purpose is to indicate the importance of voluntary cooperation between our professions. . ."

7. Griswold, *supra* note 1.

8. See, *e.g.*, Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954); Stans, *The Tax Practice Problem II, A Proposed Solution to the Controversy*, J. Accountancy, Dec. 1955, p. 36.

9. *E.g.*, Humphreys v. Commissioner, 88 F.2d 430, 432 (2d Cir. 1937).

10. Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954). Even the famous case of McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), involved a tax issue.

11. Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619, 623, 625 (1954) ". . . [Q]uestions of law and accounting are frequently inextricably intermingled as a result of which doubt arises as to where the functions of one profession end and those of another begin . . . [T]hey occupy much common ground . . . where it is difficult to draw a precise line to separate their respective functions."; Lowell Bar Ass'n v. Loeb, 315 Mass. 707, 52 N.E.2d 27, 32 (1943); Application of N. Y. County Lawyers' Assn, 273 App. Div. 524, 78, N.Y.S.2d 209 (1948), *aff'd sub nom. In re* Bercu, 299 N.Y. 728, 87 N.E.2d 451 (1949).

vidual,[12] but they must not use this right as a facade in the performance of legal work for others.[13] There still remains a large "fringe area" in the field of taxation into which an accountant enters virtually "at his own risk".[14] Adding to the confusion is the lack of uniformity in judicial decisions.[15] Although the dispute has possibly been over-emphasized, a storm of protest inevitably follows a decision adverse to an accountant.[16]

"INCIDENTAL" & "DIFFICULT QUESTION OF LAW" TESTS

Some courts permit a layman to perform work of a legal nature provided it is incidental to his primary occupation.[17] Under this rule accountants have been permitted to advise clients as to where the law will allow a tax saving,[18] and realtors have been permitted to prepare deeds and mortgages.[19] If the layman receives compensation for these "quasi-legal" duties, they are no longer incidental to his primary occupation.[20]

Other courts state that if a layman resolves a legal question for another which requires an application of more legal knowledge

12. *E.g.*, Merrick v. American Security & Trust Co., 107 F.2d 271 (1939).

13. See Arkansas Bar Ass'n v. Union Nat'l Bank, 224 Ark. 48, 273 S.W.2d 408 (1954); Bay County Bar Ass'n v. Finance System, 345 Mich. 434, 76 N.W.2d 23 (1956).

14. See Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954) (handling of operating loss carryback); Chicago Bar Ass'n v. United Taxpayers of America, 312 Ill. App. 243, 38 N.E.2d 349 (1942) (filing of claim with state tax department); Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788 (1951) (preparation of tax return involving difficult questions of law); Mandelbaum v. Gilbert & Barker Mfg. Co., 160 Misc. 656, 290 N.Y.Supp. 462 (City Ct. of N. Y. 1936) (opinion rendered as to deductibility of items for income tax).

15. *Compare* Chicago Bar Ass'n v. United Taxpayers of America, 312 Ill. App. 343, 38 N.E.2d 349 (1942) (Representation before administrative board held to be an unauthorized practice of law.), *with* Goodman v. Beall, 130 Ohio St. 427, 200 N.E. 470 (1936). *Compare* Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788 (1951) (The incidental test is by no means decisive.), *with* Auerbacher v. Wood, 142 N.J.Eq. 484, 59 A.2d 863 (1948) (Legal advice given as an incident of employment is not an unauthorized practice of law.). *Compare* Cain v. Merchants' Nat'l Bank & Trust Co., 66 N.D. 751, 268 N.W. 719 (1936) (Charge of fee is a determinative factor.), *with* Washington State Bar Ass'n v. Washington Ass'n of Realtors, 41 Wash.2d 697, 251 P.2d 619 (1956) (Charge of fee is not essential.).

16. Similar to that following the decision in Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954). Dean Griswold states that although "[I]t would not be fair to call the dispute a tempest in a teapot . . . it is not worth the paper and time and effort that have been spent on it." Griswold, *supra* note 1.

17. *E. g.*, Application of N. Y. County Lawyers' Ass'n, 273 App. Div. 524, 78 N.Y.S.2d 209 (1948), *aff'd sub nom. In re* Bercu, 299 N.Y. 728, 87 N.E.2d 451 (1949). See also, Cain v. Merchants Nat'l Bank & Trust Co., 66 N.D. 651, 268 N.W. 719 (1936).

18. Elfenbein v. Luckenbach Terminals, 111 N.J.L. 67, 166 Atl. 91 (1933); High v. Trade Union Courier Pub. Corp., (Supreme Ct. of N. Y. Co.) 69 N.Y.S.2d 526 *rehearing denied*, 275 App. Div. 922, 90 N.Y.S.2d 681 (1st Dep't 1946). But, where the only work of the accountant was the rendition of a report on the legal questions involved in the deductibility of certain items for federal income tax purposes, it was held to be an unauthorized practice of law. Application of N. Y. County Lawyers' Ass'n, *supra* note 17.

19. *E.g.*, Petitions of Ingram County Bar Ass'n, 342 Mich. 214, 69 N.W.2d 713 (1955); Cowern v. Nelson, 207 Minn. 642, 290 N.W. 795 (1940).

20. Cowern v. Nelson, *supra* note 19; Cain v. Merchants Nat'l Bank & Trust Co., 66 N.D. 751, 268 N.W. 719 (1936) "If compensation is exacted either directly or indirectly, all advice to clients, and all action taken for them in matters connected with the law,' constitute practicing law."

than is possessed by the "average intelligent layman", he is engaged in an unauthorized practice of law.[21] This is the "doubtful or difficult question of law" test which is often applied in connection with the incidental test.[22] The application of the incidental test is definitely more simple. The determination of whether the acts performed could have been performed by an "average intelligent layman" is complex and adds no certainty to the definition of "practice of law".[23] The fringe area under this test still includes a large part of the tax field, leaving an accountant who enters the area subject to possible legal proceedings for the unauthorized practice of law.[24] These proceedings may take the form of quo warranto,[25] injunction,[26] contempt,[27] or misdemeanor charges.[28] Accountants have also been denied recovery of fees in suits initiated by them against clients;[29] and in such cases the defense of unauthorized practice of law in tax matters has become common.[30] The application of the "difficult question of law" test is not indefensible, however. The accountants themselves seem to have approved it in the "Statement of Principles".[31]

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21. Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954); Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788 (1951).

22. Gardner v. Conway, *supra* note 21; Cain v. Merchants Nat'l Bank & Trust Co., 66 N.D. 751, 268 N.W. 719 (1936).

23. See Gardner v. Conway, *supra* note 22.

24. *Ibid.*

25. *E.g.*, State *ex rel.* Fatzer v. Schmitt, 174 Kan. 581, 258 P.2d 228 (1953).

26. For cases in which injunctions have been issued see, *e. g.*, Chicago Bar Ass'n v. United Taxpayers of America, 312 Ill. App. 243, 38 N.E.2d 349 (1941); Washington State Bar Ass'n v. Washington Ass'n of Realtors, 41 Wash.2d 697, 251 P.2d 619 (1952). North Dakota courts have this power, see, Cain v. Merchants Nat'l Bank & Trust Co., 66 N.D. 751, 268 N.W. 719 (1936).

27. *E.g.*, People *ex rel.* Illinois State Bar Ass'n v. People's Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931); Bump v. Dist. Court of Polk County, 232 Iowa 623, 5 N.W.2d 914 (1942). Statutory provisions appear to limit the power of the courts to punish for contempt in North Dakota. Murphy v. Townley, 67 N.D. 560, 274 N.W. 857 (1937) N.D. Rev. Code § 27-1003 (1943), "Every court of record of this state may punish as for a civil contempt any person guilty of a neglect or violation of duty or other misconduct by which a *right* or *remedy* of a party to a civil action or proceeding pending in such court may be defeated, impaired, impeded, or prejudiced in the following cases: (4) A person for assuming to be an attorney . . . and acting as such without authority . . . " [Emphasis added].

28. Where provided by statute. *E.g.*, *In re* McCallum, 186 Wash. 312, 57 P.2d 1259 (1936). See N.D. Rev. Code § 27-1101 (1943) (Unauthorized practice of law as misdemeanor).

29. *E.g.*, Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954); Stack v. P. G. Garage, Inc., 7 N.J. 118, 80 A.2d 545 (1951); Mandelbaum v. Gilbert & Barker Mfg. Co., 160 Misc. 656, 290 N.Y.Supp. 462 (City Ct. of N. Y. 1936).

30. *Ibid.*

31. 76 A.B.A. Rep. 283-285 (1951). "1. . . Certified Public Accountants should encourage clients to seek the advice of lawyers wherever *legal questions* are presented." "2. Preparation of Federal Income Tax Returns . . . When a certified public accountant prepares a return in which *questions of law* arise, he should advise the taxpayer to enlist the assistance of a lawyer." "3. Ascertainment of Probable Tax Effects of Transactions. . . When such ascertainment raises *uncertainties* as to the interpretation of law (both tax law and general law), or uncertainties as to the application of law to the transaction involved, the certified public accountant should advise the taxpayer to enlist the services of a lawyer." "6. Representation of Taxpayers Before Treasury Department . . . If, in the

PRACTICE BEFORE QUASI-JUDICIAL BODIES BY ACCOUNTANTS

The last great protest from the accountants arose as a result of a California court's decision in the case of *Agran v. Shapiro.*[32] In that case a certified public account (C. P. A.), who was also an enrolled agent before the Treasury Department, handled a disputed tax return for a client. A considerable amount of research was done to enable the accountant to present an argument to the investigating agent justifying the treatment of a loss carry-back. The research consisted of reading court and federal agency decisions, and interpreting them to the facts of the return. The court held this work to be an unauthorized practice of law and denied the accountant a recovery of fees for which he was suing. The court cited the "Statement of Principles" which reserved work of this nature to members of the bar.[33]

In its holding the court relied upon the concluding paragraph of Treasury Circular 230, § 10.2 (f) which provides: ". . . that nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law."[34] The court interpreted this section literally — non-lawyers were permitted to perform only such acts before the Department as constituted non-legal matters. This interpretation the accountants emphatically disputed.[35]

The accountants construed the decision as a denial of their right to practice before the Treasury Department and the Tax Court.[36] Immediately the A. I. A. embarked upon a four-point program to combat the effects of the decision: (1) introducing proper remedial legislation to Congress,[37] (2) asking the Treasury Department to issue a statement clarifying or deleting the dis-

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course of such proceedings, *questions* arise involving the application of legal principles, a lawyer should be retained." "8. Claims for Refund . . . [W]here a *controversial legal issue* is involved or where the claim is to be made the basis of litigation, the services of a lawyer should be obtained." [Emphasis added].

32. 127 Cal. App.2d 807, 273 P.2d 619 (1954); See Stans, *supra* note 8.

33. Agran v. Shapiro, 127 Cal. App.2d 807, 274 P.2d 619, 626 (1954).

34. 31 C.F.R. § 10.2 (f). The preceding portion states that an enrolled agent shall have the same rights as an enrolled attorney, provided that an enrolled agent may not draft instruments conveying title for the purpose of affecting federal taxes.

35. Editorial, *The Agran Case in Perspective,* J. Accountancy, Dec. 1956, pp. 29-31.

36. Stans, *supra* note 8. "This decision . . . tends to nullify—at least within the area of the court's jurisdiction—the Treasury enrollment of the CPA."

37. H.R. 9922 and H.R. 1601 of the 83rd Congress (identical bills) provided, ". . . no person shall be denied the right to engage in such activities [settlement of tax liabilities with the Internal Revenue Service] solely because he is not a member of any particular profession or calling." No action was taken on the two bills. H.R. 2461 was introduced in the 84th Congress, similar to the preceding bills. Again no action was taken on the proposal. For a discussion see Jameson, *Chairman Jameson's Statement to the House,* 41 A.B.A.J. 318 (1955).

puted section of Circular 230,[38] (3) appealing the *Agran* case or some similar case to the United States Supreme Court,[39] and (4) presenting an educational program to "create a better understanding of the C.P.A.'s place in the tax field".[40] The A. B. A. expressed their disapproval to this educational program, calling it "unfortunate".[41] Limited success was obtained by the A. I. A. in that the Treasury did issue a statement giving its interpretation of Circular 230.[42] It stated that enrolled agents had satisfactorily represented clients "fully" before the Department and there was no reason why they should not continue to do so despite recent decisions to the contrary. In the concluding paragraph the Treasury Department admonished the enrolled agents and attorneys to respect the "appropriate fields of each in accordance with th[e] Joint Statement [of Principles]" or appropriate action would be taken to accomplish this end.[43]

The California court was not without judicial precedent in the *Agran* decision. Presenting a legal argument for a client before an administrative body had previously been held to constitute the unauthorized practice of law.[44] Whether or not the regulations of the particular body permit such practice by laymen is immaterial.[45] Even a legislative enactment granting laymen the right to practice before an administrative board or commission in a representative capacity has been rejected by the courts as an imposition upon the judiciary by the legislature.[46] A different result is reached in jurisdictions where the courts have not exercised the "inherent" authority to control and regulate the practice

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38. The A. B. A. opposed any substantial change stating, ". . . no change in substance should be made of the existing provisions . . ." Editorial, *Statement of the American Bar Association Regarding Proposed Revision of Treasury Circular No. 230*, 40 A.B.A.J. (1954). A statement was issued by the Treasury. For complete text see *Treasury Department Interpretation of Section 10.2 of Treasury Department Circular 230 (C.F.R. 10.2)*, J. Accountancy, March 1956, p. 6.

39. No such appeal has been carried to the Supreme Court.

40. A booklet entitled "Helping the Taxpayer" was distributed illustrating the CPA's role in settling disputes with the Treasury Department. In addition a film embodying the same theme was televised. J. Accountancy, Jan. 1956, p. 10.

41. Jameson, *supra* note 37.

42. *Treasury Department Interpretation of Section 10.2 of Treasury Department Circular 230 (C.F.R. 10.2)*, *supra* note 38.

43. Although the Treasury Department asserted its right to determine who may practice before it, this reference to the "Statement of Principles" seems to indicate the court's conclusion was correct in the *Agran* case, but that the rule must not affect the enrolled agents' right to handle issues which do not involve "substantial" questions of law.

44. Chicago Bar Ass'n v. United Taxpayers of America, 312 Ill. App. 243, 38 N.E.2d 349 (1941); People *ex rel.* Chicago Bar Ass'n v. Goodman, 366 Ill. 346, 8 N.E.2d 941 (1937); State *ex rel.* Johnson v. Childe, 147 Neb. 527, 23 N.W.2d 720 (1946); Stack v. P. G. Garage, Inc., 7 N.J. 118, 80 A.2d 545 (1951). See also Petition of Kearney, 63 So.2d 630 (Fla. 1953).

45. People *ex rel.* Chicago Bar Ass'n v. Goodman, *supra* note 44.

46. *Ibid.*

of law.[47] These decisions differ from the *Agran* case in one respect —the former involved practice by a layman before state bodies, rather than a Federal body.[48] Federal court decisions seem to indicate a denial of authority in the state courts to punish laymen for unauthorized practice of law before a Federal administrative body.[49] As these Federal bodies derive their power to admit laymen to practice before them from Congressional action,[50] it would appear that the states would have to yield to the constitutional supremacy of the Federal government.[51]

ADVICE AS TO LEGAL RIGHTS

Legal advice to a client is a field traditionally reserved to members of the bar.[52] An accounting firm cannot employ attorneys for the purpose of giving legal advice to firm clients.[53] The attorney must owe his undivided loyalty and attention to his client. The intervention of a non-lawyer employer destroys this relationship.[54] This does not mean accountants are denied the right to give any legal advice to their clients. Disclosure of a statutory provision which will enable the client to make tax savings is permissible.[55] An accountant may recommend action to clients in tax matters so long as it is incidental to his employment as an

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47. See State *ex rel.* Indianapolis Bar Ass'n v. Fletcher Trust Co., 211 Ind. 27, 5 N.E.2d 538 (1937).

48. With the exception of Petition of Kearney, 63 So.2d 630 (Fla. 1953).

49. See Brooks v. Mandel-Witte Co., 54 F.2d 992 (2d Cir.), *cert. denied* 286 U.S. 559 (1932); Goldsmith v. U. S. Board of Tax Appeals, 270 U.S. 117 (1925). See also Konigsberg v. State Bar of California, 353 U.S. 252 (1957) (which establishes the proposition that although regulation of practice of law is traditionally a state function, the U. S. Supreme Court will rule on matters it considers an abuse of the States' discretion. State courts have, however, usually declined to punish laymen for practice before federal bodies,) Noble v. Hunt, 99 S.E.2d 345 (Ga. 1957); *In re* Lyon, 301 Mass. 30, 16 N.E.2d 74 (1938).

50. The right of the Treasury Department to make such a ruling is derived from 5 U.S.C. § 261 (1926).

51. U.S. Const., art. IV, "This Constitution and the Laws of the United States which shall be made in pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary, Nothwithstanding." See De Pass v. B. Harris Wool Co., 346 Mo. 1038, 144 S.W.2d 146 (1940); but see *In re* Lyon, 301 Mass. 30, 16 N.E.2d 74 (1938) for a discussion of the rights of the states.

52. *E.g.*, Rosenthal v. Shepard Broadcasting Service, 299 Mass. 286, 12 N.E.2d 819 (1938); People v. Alfani, 227 N.Y. 334, 125 N.E. 671 (1919).

53. See People *ex rel.* Courtney v. Ass'n of Real Estate Taxpayers of Illinois, 354 Ill. 102, 187 N.E. 823 (1933); Lowell Bar Ass'n v. Loeb, 315 Mass. 707, 52 N.E.2d 27 (1943); *In re* Otterness, 181 Minn. 254, 232 N.W. 318 (1930); Cain v. Merchants Nat'l Bank & Trust Co., 66 N.D. 751, 268 N.W. 719 (1936). Dean Griswold stated that in his opinion such practice by an attorney would be unethical. Griswo'd, *supra* note 1 at 33.

54. See, *e. g.*, Lowell Bar Ass'n v. Loeb, 315 Mass. 707, 52 N.E.2d 27 (1943); *In re* Otterness, 181 Minn. 254, 232 N.W. 318 (1930). Canons of Professional Ethics of the A. B. A., No. 35, "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer . . ."

55. Elfenbein v. Luckenbach Terminals, Inc., 111 N.J.L. 67, 166 Atl. 91 (1933); High v. Trade Union Courier Pub. Corp., 69 N.Y.S.2d 527 (1946), *rehearing denied* 275 App. Div. 922, 90 N.Y.S.2d 681 (1949).

accountant[56] and does not involve a doubtful or difficult question of law.[57]

DRAFTING OF LEGAL INSTRUMENTS

Acting as a mere scriviner in the drafting of legal instruments is not considered as the practice of law[58]—seldom would an accountant to be called upon to perform such an act. A transaction more familiar to accountants would be the completion of skeleton forms, such as deeds, contracts, wills, partnership agreements, or corporate minutes. An accountant is not generally permitted to complete such documents.[59] If the legal form were simple in nature and incidental to the work of the accountant it would be permitted.[60] Income tax returns may properly be prepared by laymen;[61] but here too, difficult questions of law must not be resolved by the accountant in the preparation of the return.[62] The accounting profession has been "suspected" of drafting a large number of family partnerships and trusts.[63] The preparation of such legal documents, although for tax purposes, is admittedly out of the scope of an accountant's legitimate field of work.[64]

CONCLUSION

Individuals from both professions have recently come to the conclusion that submitting certified public accountants to the rigors of the "practice of law" tests is merely begging the question.[65] These individuals feel that C.P.A.'s should not be classified with ordinary laymen[66] for the reason that this group must pass a difficult examination in law and must abide by a code of ethics.[67] Such differentiation of C.P.A.'s would, however, possibly warrant similar treatment to other groups of laymen who are equally specialized in their respective fields.[68] The courts argue that

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56. *E.g.*, Lowell Bar Ass'n v. Loeb, 315 Mass. 707, 52 N.E.2d 27 (1943).
57. Elfenbein v. Luckenbach Terminals, Inc., 111 N.J.L. 67, 166 Atl. 91 (1933).
58. *E.g.*, Eley v. Miller, 7 Ind. App. 529, 34 N.E. 836 (1893).
59. "Joint Statement of Principles. . .", 76 A.B.A. Rep. 284 (1951), "Only a lawyer may prepare legal documents such as agreements, conveyances, trust instruments, wills, or corporate minutes. . ."
60. *E.g.*, Cain v. Merchants Nat'l Bank & Trust Co., 66 N.D. 751, 268 N.W. 719 (1936).
61. *E.g.*, Application of N. Y. County Lawyers' Ass'n, 273 App. Div. 524, 78 N.Y.S.2d 209 (1948), *aff'd sub nom. In re* Bercu, 299 N.Y. 728, 87 N.E.2d 451 (1949).
62. Agran v. Shapiro, 127 Cal. App.2d 807, 273 P.2d 619 (1954); Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788 (1951).
63. Griswold, *supra* note 1 at 32-33.
64. See note 59 *supra;* see also Stans, *supra* note 8 at 41.
65. Griswold, *supra* note 1 at 30; see Stans, *supra* note 8 at 37.
66. *Ibid.*
67. *Ibid.*
68. *E.g.*, realtors, insurance agents, labor-management relations experts, trust companies. This would also open the door to the practice of law by corporations.

"the interest of the public is not protected by the narrow specialization of an individual who lacks the perspective and the orientation which comes only from a thorough knowledge and understanding of basic legal concepts, of legal processes, and of the interrelation of the law in all its branches."[69] A layman is not subject to the discipline of the courts for irregular practices as are attorneys.[70] An accountant could only be disciplined by more difficult legal processes.[71] Another question which arises is what distinctions would be made between the rights of C.P.A.'s and other accountants? Legislative attempts at establishing such distinctions by denying the non-certified members of the accounting profession the right to perform certain functions have often been declared unconstitutional.[72]

It appears that legislation to aid in a settlement of the controversy is virtually impossible,[73] with the exception of a few scattered jurisdictions where the judicial branch does not have the inherent power to regulate the practice of law.[74] Each of the two professions will have to rely upon the sincere desire of the other to reach an equitable solution. That solution will be accomplished only by honest cooperation and willingness to compromise where compromise is possible. Continued conflict will benefit neither the legal profession nor the accounting profession.[75]

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69. Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788, 796 (1951). *In re* Roel, 3 N.Y.2d 224, 144 N.E.2d 24, 28 (1957) (dictum), "Accountants may know a great deal about tax law. . . A specialized area of competence does not, however, entitle these laymen to engage in the business of giving legal advice based on their knowledge of the subjects."

70. *E.g.*, Bump v. District Court of Polk County, 232 Iowa 263, 5 N.W.2d 914 (1942).

71. *Ibid.*

72. *E.g.*, Moore v. Grillis, 205 Miss. 865, 39 So.2d 505 (1949) (In which a state statute permitting only CPAs and attorneys to prepare tax returns was held unconstitutional.) *Contra*, Rhode Island Bar Ass'n v. Libutti, 81 R.I. 182, 100 A.2d 406 (1953).

73. Only the courts can determine who may practice law and what acts constitute the practice of law. *E.g.*, Arkansas Bar Ass'n v. Union Nat'l Bank, 224 Ark. 48, 273 S.W.2d 408 (1954); *In re* Opinion of the Justices, 289 Mass. 607, 194 N.E. 313 (1935); Cowern v. Nelson, 207 Minn. 642, 290 N.W. 795 (1940).

74. See State *ex rel.* Indianapolis Bar Ass'n v. Fletcher Trust Co., 211 Ind. 27, 5 N.E.2d 538 (1937) (Which seems to imply that statutes regulate the practice of law); Murphy v. Townley, 67 N.D. 560, 274 N.W. 857 (1937) North Dakota also seems to have established a legislative superiority in this field. N.D. Rev. Code § 27-0207 (1943), "The Supreme Court of this state may make all necessary rules for: . . . (3) The restraint of persons unlawfully engaging in the practice of law in this state." If the power granted by this section is not inherent in the court, legislative enactment could remove it.

75. The Attorney General of N. Y. is making a study of unauthorized practice of law and means of dealing with the problem. Developments may bear watching. Lawyer Service Letter, N. Y. State Bar Ass'n, Letter No. 231, Nov. 8, 1957.