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REPORT OF AICPA-NASBA COMMITTEE ON
ENFORCEMENT OF ETHICAL PROCEDURES

by William H. Westphal
before Spring Meeting of Council
May 11, 1971

It is an inexorable law governing the affairs of men that any sound achievement will exact its price, regardless of our unwillingness to come to terms with this rule.

Professional status and privilege may not be conferred without the acceptance of corresponding responsibility and discipline. This discipline will either be self-imposed or it will be administered by others; of this basic proposition we may be assured, for no group in our modern world may hope to attain the recognition and standing conferred by admission to a profession unless it is prepared to submit to the restraints imposed by rules of professional conduct. The question grows more acute as our profession becomes more numerous and as we are continually subjected to the critical analysis of a society that will determine whether our works will endure.

Because a comprehensive observation of our performance in the field of disciplinary enforcement indicates either the attainment of near perfection or an unfortunate lag in accomplishment and since the existence of the former state is incredible, the president of the AICPA has appointed, to explore this area, a special committee known as the AICPA-NASBA Committee on Enforcement of Ethical Procedures.

If we may have fallen short of the desired mark in ethical enforcement, it is not the fault of either the Ethics Committee or the Trial Board of the AICPA, both of which have consistently been composed of very capable and highly qualified persons who have applied themselves devotedly and most efficiently to the task of maintaining ethical standards and have dedicated many

hours gratuitously to this purpose. I do not believe that any other groups of comparable size with a similar amount of available time could possibly have surpassed their performance. Our difficulty grows rather out of the diversity of entities that are charged with the enforcement of discipline and the limitation on the time and funds that must necessarily be applied to this task. Perhaps, also, some of our shortcomings in this respect may be attributable to the lethargy of individual members of the profession, resulting from a lack of understanding of the importance of such rules and their firm but equitable enforcement.

Because of the numerous ramifications of this problem, some of which cannot be presently anticipated, no definitive answers are undertaken at this time. The directional thrust of our thinking is set forth herein in broad general terms, and is admittedly subject to revision from time to time as we progress with out analysis of the questions involved. It is believed that, if this task is thoroughly performed, a report presenting the Committee's views with a degree of finality cannot be submitted any earlier than the Spring Council Meeting of 1972.

The Ethics Division itself is looking at the question of enhancing the ethical enforcement program, and we sincerely trust that its views will be made available to our committee as soon as it has defined them. We shall likewise solicit the thinking of the Trial Board, and shall welcome a free expression of opinion from members of Council, for you represent a vast reservoir of experience.

The professional practice of the certified public accountant is quite different from that of the physician who deals only with the patient in his locality, or the attorney who conducts hearings in the local court, since to a very much greater degree, it is governed by the course of interstate commerce and transcends state boundaries. Many C.P.A.s at present practice in a number of

states and the state lines are passed over without any particular concern.

To be effective, disciplinary proceedings must be speedy, competently administered and result in even handed justice throughout all states of the Union. On its face, this is now impossible when one takes into account the trifurcated approach to enforcement presently in vogue, the diversity of the rules under which those agencies capable of administering discipline presently operate, the disparity in the funds available and the time that may be spent as well as the varying degrees of competence of the persons who share this responsibility in different localities. A diffusion of responsibility quite frequently results in the disintegration of any strongly cohesive endeavor and the delays and blunders that may result from an ill-trained or an uncoordinated enforcement effort may render it generally ineffective, if not completely impotent.

It is general knowledge that the three primary organizations having jurisdiction in this field of ethical enforcement are:

1. The AICPA
2. The State Societies
3. The State Boards of Accountancy

Under conditions presently existing, it is quite possible that a violation of these rules may be tried and punished by the AICPA without the state board of accountancy's taking cognizance of the action, thus permitting the continuing practice of someone who should not be a member of the profession. On the other hand, the state society may have knowledge of matters pertaining to the conduct of an Institute member of which the Institute has never been apprised, thus nullifying the Institute's enforcement effort with respect to that particular case.

The problem, therefore, is multi-faceted and its eventual solution will be strongly influenced by the relationship between the state societies,

the state boards of accountancy and the AICPA. It is quite likely that the proposed new rules of professional conduct now under consideration by the appropriate committee which were just described by Mr. Olson, may have some bearing on attitudes that will prevail in this matter. The promotion of concurrent membership in the state societies and the AICPA would tend to make the path toward uniform enforcement an easier one to negotiate.

THE APPROACH NOW UNDER CONSIDERATION

The general approach that seems to commend itself most strongly to our committee at this time calls for the trial of the cases by the state boards of accountancy with the factual and evidential background to be developed by the state societies with the guidance and assistance of the AICPA. This choice is made because the State Board of Accountancy has the ability to act with a finality not possible to the AICPA or the state society, for it may deprive the C.P.A. of his certificate. Also, the state board usually has the power of subpoena, making possible the production of evidence that may not be available to the state society or to the AICPA. To accomplish this purpose within the presently existing framework and structure of these organizations, we feel it would be necessary to:

1. Bring the rules of the state societies and state boards of accountancy into accord with those of the AICPA.
2. To divide the cases between
 - (a) those that deal with technical standards .
 - (b) those that do not deal with technical standards but represent disputes within the profession regarding such matters as solicitation and advertising, as well as any others pertaining to the relationship between C.P.A.s.
3. Provide special assistance for the prosecution of difficult technical cases, in dealing with investigative features and procedural problems.

BRINGING THE RULES INTO ACCORD

It was the considered opinion of the committee that it is highly desirable that the rules of professional conduct of the state societies be brought into accord with the rules of the American Institute of Certified Public Accountants. According to statistics compiled by the AICPA, which were examined by the committee, this has already been accomplished to a large extent and it is believed that taking into account the presently prevailing sentiment, the task could be virtually completed. This would be the first step in any effort to integrate the local society with the AICPA and would have a practical effect in the attainment of that goal. The next requirement would be an undertaking to bring the state laws or regulations of the state boards of accountancy promulgated under these laws as nearly into accord with the AICPA and state society rules as possible. This is obviously a more difficult task, since it would involve the legislatures of certain states and local board opinion. Nevertheless, statistics of the AICPA, examined by the committee, indicate that much has been done to bring this to pass, and the accomplishment of this purpose seems thoroughly within the bounds of possibility. This establishment of reasonable conformity would constitute a giant step in the direction of eliminating the confusion and duplication attendant upon the present state of affairs.

DIVISION OF CASES BETWEEN THOSE INVOLVING TECHNICAL STANDARDS AFFECTING THE CLIENT OR THE PUBLIC GENERALLY AND THOSE THAT REPRESENT DISPUTES BETWEEN MEMBERS

If this plan should be followed, the enforcement cases would be divided into those involving technical standards affecting the client or the public generally, some of which are extremely long and complex, and those that do not affect the client or the public, but are concerned merely with the relations existing between members of the profession.

The disputes affecting only members, such as those pertaining to solicitation, can be handled by the state societies, for unless there are serious sanctions to be imposed, there would be no need to take them to the state boards of accountancy.

CASES INVOLVING TECHNICAL STANDARDS AFFECTING THE CLIENT OR THE PUBLIC GENERALLY

Quite frequently, the factual background in such cases is very complex and sound conclusions are extremely difficult to reach. These may result in the suspension or the permanent deprivation of the right to practice as a certified public accountant, and for this reason, they may be appealed to the courts. They may require assistance from the AICPA, following the procedures set forth under the heading, "Assistance in Complex Cases Involving Technical Standards."

ASSISTANCE IN COMPLEX CASES INVOLVING TECHNICAL STANDARDS

To render the utmost service possible in the implementation of this plan, consideration is being given to the desirability of having an administrative head of this program appointed by the AICPA who would assemble centrally, or at various significant regional points where this seems necessary, a staff that should be capable of performing the investigative function and to give advice with respect to proper procedure. Moreover, there should be available as these are needed, C.P.A.s of broad experience and knowledge who might examine the crucial points of a complex technical standards case for the purpose of reporting to the Board of Accountancy that would be hearing the case.

The work of investigation when it is delicate and difficult might be performed by a person whose special background of experience particularly equips him for this task. Consideration could be given to someone with training as an F.B.I. or Treasury agent, although perhaps persons with other experience might perform quite satisfactorily.

The assistance with procedural aspects of the case might be rendered either by an attorney retained to advise all accountancy boards or by knowledgeable and highly experienced personnel at each regional center. Taking into account the scope of the problems that may be involved, which could differ according to state law, it is probable that someone with a legal background would be preferable for this purpose. He might in serious cases render legal assistance to the accountancy boards at the trial, particularly when it is believed that an appeal to the state court is likely.

Perhaps the most difficult and time consuming cases that may be dealt with by the trial agency will have to do with failure to adhere to proper standards of technical performance. These may require the expenditure of an inordinate amount of time and effort as well as the most mature judgment and technical skill. Many boards of accountancy are not presently structured to handle such matters, particularly in a small state where problems of this sort are rare, and they may find such a case very troublesome with its far-reaching implications, especially by reason of seemingly insuperable difficulties in the development of evidence necessary to accord it proper consideration. It is believed that in such cases as this, the AICPA through one of the units suggested herein might ameliorate the situation by furnishing the services of a broadly experienced practitioner who may in effect act as an expert assistant to the board. His role would be comparable with that of a master to whom a court would refer a highly complex matter or the commissioner who would establish his findings and report them to the full court, and he would examine the issues in the case intensively, writing a report for the assistance of the board of accountancy. The board could, of course, accept the recommendations in the report or reject them, but this procedure should very materially reduce the time required for the consideration of the questions by the board. Pre-

sumably, depending upon the procedural provisions governing the state board under the local law, the person who writes this report would necessarily be available for testimony and for cross examination by an attorney for he respondent in the case. This takes into account the importance of establishing any record that may be required if this case should be taken to the state court on appeal.

A person rendering expert accounting assistance might be (1) an employee of the AICPA, or (2) a C.P.A. who is either presently engaged in professional practice as a certified public accountant or who may be retired from practice and would therefore have the time to give to such a project. This professional might either be one who is willing and in position to contribute his time or could be retained on a fee basis. It appears that the C.P.A. presently in practice or retired from practice would be the best person obtainable for an assignment of this type and would be preferable to a full time member of the Institute's professional staff.

We believe it to be highly desirable that this statement of the trend of our thinking should be exposed to the state societies and the state boards of accountancy for their comments and that an intensive discussion should be undertaken with members of these groups on any controversial issues that may be related. It is thoroughly apparent that the successful implementation of any new enforcement program must be completely dependent on its acceptance and on the collaborative affairs of those represented by these local organizations. Also, it is quite likely that any plan eventually adopted must be undertaken on a gradualistic basis, doubtless with a succession of transitional adjustments from the presently existing status to the new approach.

FINANCING THE PLAN

The question of financing ethics enforcement activities under a revised structure such as the one referred to herein must necessarily require thorough consideration. It seems inopportune at this time to forecast the probable additional cost since our views are not adequately crystallized; nevertheless, the committee proposes, once its route is definitely chosen, to seek a determination of the budget that might be required for this purpose. An examination of the American Bar Association's experience with the enforcement problem indicates that this question is perennial and in the professions generally, ethical enforcement is likely to suffer for reason of the limited funds available.

THE ACCUMULATION OF INFORMATION AT ONE CENTRAL POINT

The question of a common data bank has been raised,- a procedure that would make it possible to retain in one place all information concerning members and their activities. The consistent exchange of information between the state organizations and the AICPA is crucial to an efficient disposition of disciplinary cases. The committee is examining this question; however, it regards as of paramount importance at this time the nature of our basic approach to the enforcement problem. Therefore, the matter of such data compilation will be considered more fully at a later date.

We want it thoroughly understood that our presentation of this approach does not imply an irrevocable commitment to the plan, but a tentative exploration in depth to obtain the general reaction of the membership. It may be necessary, in the light of further discussion, to amend or to abandon it, but it constitutes a basis for our deliberations, and certainly a foundation for further thinking. If very thorough evaluation indicates that it lacks feasibility or cannot win the support of those who will be most vitally involved, we must try all other avenues

that may be open until we are able to find one that will satisfactorily combine pragmatism and general acceptability.

Although there are thorny problems to be resolved in effecting a practicable, integrated solution to this question, we believe that with a positive attitude and a determined effort on the part of the profession, our goal can be achieved. It is the committee's aim and purpose, therefore, to press forward to a final successful conclusion of its assigned undertaking.

Respectfully submitted,

AICPA-NASBA COMMITTEE ON ENFORCEMENT
OF ETHICAL PROCEDURES
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