



Texas State Board of Public Accountancy

333 Guadalupe, Tower III Suite 900, Austin, Texas 78701-3900

William Treacy, Executive Director

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September 2, 2003

FILE # ML-43246-03

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I.D. # 43246

SEP 04 2003

OPINION COMMITTEE

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion regarding the correct interpretation of section 901.405(e) of the Public Accountancy Act that took effect on September 1, 2003.

Dear Attorney General Abbott:

The Texas State Board of Public Accountancy ("Board") hereby requests an opinion of the Attorney General of Texas as to the correct interpretation of section 901.405(e) of the Public Accountancy Act ("Act") that took effect on September 1, 2003. Let me begin by giving you some background on the way a certified public accountant ("CPA") becomes licensed. To obtain a license, a CPA must first obtain a certificate. The requirements to be eligible to receive a certificate are that a candidate:

- (1) be of good moral character as determined under Section 901.253;
- (2) meet the education requirements established under Section 901.254 or 901.255;
- (3) pass the uniform CPA examination;
- (4) meet the work experience requirements established under Section 901.256; and
- (5) pass an examination on the rules of professional conduct as determined by board rule.

TEX. OCC. CODE §901.252. You will note that the examination requirements pertain to receiving a certificate. The certificate is not subject to annual renewal and a certificate holder will remain in possession of his certificate until he voluntarily surrenders it to the Board under section 901.506 of the Act, or the Board revokes the certificate under section 901.501(a) (1). A certificate holder must also have a license in order to practice public accountancy. TEX. OCC. CODE §901.401.

The CPA license is renewed annually. TEX. OCC. CODE §901.403; 22 TEX. ADMIN. CODE §515.1. The requirements to renew a license are payment of all required fees, 22 TEX. ADMIN. CODE §515.1(c), participate in the mandatory number of hours of continuing professional education ("CPE"), 22 TEX. ADMIN. CODE §523.62, and not otherwise be impeded for disciplinary reasons. Under the prior statute, a certificate holder could go as long as three years without renewing his license and still be able to renew his license upon reporting the required CPE and paying all accumulated fees and late penalties, assuming he has no other disciplinary impediment. After three years of non-renewal, a certificate holder's certificate was administratively revoked through a

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(512) 305-7800

Automated
Information
(512) 305-7870

CPE
(512) 305-7844

Enforcement
(512) 305-7866

Licensing
(512) 305-7853

Qualifications
(512) 305-7850
(512) 305-7851

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Review
(512) 305-7853

FAX
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mass hearing process. A former certificate holder could under the old Act and still can under the new Act apply for reinstatement under section 901.507 or section 901.506. There is no re-examination requirement under the former and the re-examination requirement under the latter may be waived by the Board upon request. As a practical matter, the Board does not require re-examination for reinstatement.

The new provision of the Act states:

(e) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

TEX. OCC. CODE §901.405(e). The requirements for obtaining an "original license" are that the applicant complete the required application, be a certificate holder, obtain the required number of hours of CPE and pay the required fees. 22 TEX. ADMIN. CODE §515.1 There is no examination requirement to obtain a license. A certificate holder retains his certificate until it is revoked by the Board. The only examination requirement pertains to the obtaining of a certificate.

The Board's questions to you are:

1. Do the words "original license" mean just that and a certificate holder who has allowed his license to lapse for more than two years need only pay the required fees and report the required CPE because those are the only requirements to obtain a license for a CPA who holds a valid certificate?

2. Do the words "including the examination requirements" mean that a certificate holder who has allowed his license to lapse for more than two years must re-take the uniform CPA examination or the examination on the rules of professional conduct or both which are required to obtain a certificate under section 901.252(3) & (5) of the Act, even though these are not requirements for a license?

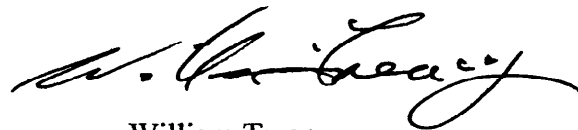
3. If the reference to examination requirements means the examination requirements for a certificate, do the words "complying with the requirements and procedures ... for an original license" mean that a certificate holder who has allowed his license to lapse for more than two years must meet the current educational requirements of section 901.252(2), the current work requirements of section 901.252(4) and undergo an evaluation of for good moral character as required by section 901.252(1) of the Act, even though these are not requirements for a license?

Requiring a certificate holder to retake the uniform CPA examination is an onerous burden analogous to requiring a lawyer to retake the bar exam or a doctor to retake the medical board exam simply for non-payment of license fees. This is a harsh requirement that the Board would prefer not to impose if the statute can reasonably interpreted not to require the retaking of the uniform CPA examination.

The Board is in the process of amending existing rules and writing new rules to comport with the additions and amendments to the Public Accountancy Act that took effect on September 1, 2003. The Board cannot reasonably respond to this amendment to section 901.405(e) of the Act without guidance from your office. Your prompt attention to this matter is appreciated.

Please contact the Board's General Counsel, Rande K. Herrell, at 305-7848 if your staff needs anything further to assist in the preparation of your opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Treacy", written in a cursive style.

William Treacy
Executive Director