1964, and that the Legislature only intended for the cessation of the sale of 1965 intangible tax stamps as of April 1, 1965.

OFFICIAL OPINION NO. 5

April 8, 1965

Mr. Tedd Vance, Secretary
State Board of Certified Accountants
912 State Office Building
Indianapolis, Indiana

Dear Mr. Vance:

This is in response to your letter of recent date in which you request an Official Opinion regarding Rule 7 of the Rules and Regulations of the State Board of Certified Accountants of Indiana. Pertinent parts of your letter read as follows:

"1. Is Rule 7, of the State Board of Certified Accountants of Indiana, invalid?

2. If the answer to this first question is yes, then may Rule 7 be ignored and certificates be issued to candidates who were unable to meet this requirement, but were qualified in all other respects?"

Rule 7 of the State Board of Certified Accountants of Indiana reads as follows:

"In order to qualify for the issuance of a certificate as a Certified Public Accountant, the applicant must have had at least three years experience in the practice of accounting which must have been of a character which satisfies the Board as to its adequacy, and must include at least two full years in public accounting work; except that in the case of an applicant who has for five years immediately prior to the application date, served as an instructor in accounting, auditing and/or business law in a school of business administration of recognized standing, the Board may waive the provision as to the required experience. (Our emphasis.)
"The board may in its discretion accept applications to take the examination in cases where the applicant has not yet fulfilled the above indicated experience requirement if the board is satisfied that the applicant has acquired the ability through education or practical accounting experience to write the examination creditably; in case such an applicant passes the examination, the certificate of Certified Public Accountant will not be issued to such applicant, until, in the opinion of the board, the requirement of practical experience has been fully satisfied."

The section of this rule which is in issue is the part requiring a candidate for a Certified Public Accountant certificate to have completed "... at least two full years in public accounting work..."

It is to be noted that the State Board of Certified Accountants of Indiana is authorized by statute to "... formulate rules for ... the examination and granting of certificates as Certified Public Accountants to persons applying and qualifying therefor..." Acts 1921, ch. 175, as amended by Acts of 1951, ch. 115, as found in Burns IND. STAT. ANN., § 63-403. However, rules adopted by an administrative body must be consistent "... with the powers conferred upon such boards..." Mobley v. City of Evansville, 130 Ind. App. 575, 581, 167 N.E.2d 473, 475 (1960). The issue then is whether the two year "public accounting" requirement of Rule 7 is consistent with Acts 1921, ch. 175, as found in Burns IND. STAT. ANN., §§ 63-401 to 63-410.

Burns IND. STAT. ANN., § 63-404 establishes various qualifications that applicants for the Certified Public Accountant title must possess, namely:

"A citizen of the United States, or a person who has duly declared his intention to become such a citizen, who has been a continuous resident of the state of Indiana for a period of not less than one [1] year prior to filing his application for a certificate, not less than twenty-one [21] years of age, of good moral character, a graduate of a high school or having received an equivalent education, with at least three [3] years"
experience in the practice of accounting, . . .” (Our emphasis.)

It is to be noted that there is no qualification established whereby an applicant need be engaged in public accounting work prior to his application. This section says that an applicant need only have “. . . at least three (3) years’ experience in the practice of accounting. . . .”

But Rule 7 formulates an additional requirement, namely that before one is eligible to become a “C.P.A.,” one must have been engaged in “at least two full years in public accounting work. . . .” The practical meaning attributed to this additional requirement is that an applicant must hold himself out to work for the public in general for two years as opposed to working for a company that does only its own accounting work. Since this requirement of Rule 7 is in addition to the statutory requirement, supra, it is inconsistent with the statute. Therefore, Rule 7 is invalid.

Furthermore, Rule 7 is invalid, for it establishes an unreasonable qualification for “C.P.A.” applicants that does not have any necessary relationship to their proficiency in the science of accounting. It is well established in Indiana that rules and regulations promulgated by administrative boards must be reasonable. Financial Aid Corp. v. Wallace, 216 Ind. 114, 119, 23 N.E.2d 472, 475 (1939).

Rule 7 is unreasonable, for there is no necessary correlation between an accountant’s skill and the fact that he has held himself out to the public as a “public accountant” for two years prior to his application. It is easy to conceive of a situation where an individual has high accomplishments in his academic training as an accountant and then has acquired a variety of accounting experience and proficiency by working for a private corporation doing only its own accounting work. It is conceivable that such an applicant would be as skilled an accountant, if not more so, than one who has held himself out to the public for two years. Therefore, to deny such a “private” accountant his “C.P.A.” certificate (assuming he is otherwise qualified) would be unreasonable.

In answer to your second question, I am of the opinion that, having determined Rule 7 to be invalid, the said rule
must not only be ignored but should also be repealed or rescinded as soon as possible. Acts 1945, ch. 120, as found in Burns IND. STAT. ANN., § 60-1506, governs the procedure for repeal and reads as follows:

"In case any agency desires to repeal, rescind or amend any rule the same procedure shall be followed as provided in this act [§§ 60-1501, 60-1511] for the adoption of a rule."

In summary hereof it is my opinion:

1. That Rule 7 of the State Board of Certified Accountants of Indiana is invalid.
2. That Rule 7 should no longer be followed by the State Board of Certified Accountants of Indiana and that certificates should be issued to candidates for registration who were unable to meet the requirement of Rule 7 but were qualified in other respects.
3. That Rule 7 should be repealed or rescinded by the State Board of Certified Accountants of Indiana as soon as possible.

OFFICIAL OPINION NO. 6
April 21, 1965

Hon. John D. Bottorff
Secretary of State
201 State House
Indianapolis, Indiana 46204

Dear Mr. Bottorff:

This is my answer to your recent request for an Official Opinion on the following question:

"Must an out-of-state collection agency post a Surety Bond, file a financial statement, and maintain an office in the State of Indiana in order to be licensed and to be able to transact business in the State of Indiana?"

An "out-of-state" or nonresident collection agency which desires to transact business in this state must file a financial statement, post a surety bond, and agree to maintain at least