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LETTER  
SUBSTITUTE OPINION 60-64-L

Originator	LES HARDY FRANKLIN GIBSON
I Concur	VANLANDINGHAM
I Concur	LES HARDY

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**ARIZONA ATTORNEY GENERAL**

April 21, 1960

Arizona State Board of Accountancy  
3300 North Central Avenue  
Phoenix, Arizona

Gentlemen:

This letter is being written pursuant to your request for the opinion of the Attorney General concerning certain questions of law.

The questions, as we understand them, and the conclusions are as follows:

- I. Does a person comply with the resident requirement of A.R.S. § 32-721(1) who makes an application for a certificate of Certified Public Accountant, under the reciprocity clause after becoming an Arizona resident but prior to the time that he has been a resident for one year, and who changes his residence after being an Arizona resident for over one year, but before the Board has acted upon his application?

The determination of this question depends upon the interpretation of "is at the time" as used in A.R.S. § 32-721(1). The alternative interpretations being, (1) that one must have the requirements at the time that the Board acts upon the application, or, (2) that one must have the resident requirements at the time he makes application and complies with the other requirements for the issuance of a certificate but not necessarily at the time that the Board acts upon the application.

We believe that the statute is not clear, as to which of the two alternatives is intended. We are therefore, guided by the established policy and interpretations as applied by this Board and others similarly situated as applied to resident students graduating from Arizona institutions who, after taking the examination, move to another state before the Board has acted upon the application. Investigation has shown that in such cases it is universally understood that such students comply with the resident requirements.

It is therefore, the opinion of the Attorney General that this question should be answered in the affirmative.

II. We understand the facts for the second situation to be as follows:

2-28-59, After notice of revocation the Board had a hearing and suspended licenses "pursuant to Rule 5."

1-25-60. Board agreed to have a hearing concerning the above licenses, on February 29, 1960.

2-29-60. Board met without acting on the above licenses and set April 23, 1960, as the date for a hearing with notice to the licensees.

All hearings were conducted without the presence of the Attorney General or his assistant.

From the above set of facts, the following questions are raised:

(A) Did notice of a hearing for revocation constitute proper notice for a hearing for a suspension-revocation type of Order as authorized by Rule 5 of the Board of Accountancy?

(B) Does an order comply with Rule 5 in merely referring to it and not reciting the provisions?

(C) Is a second notice of a hearing required by A.R.S. § 32-741 or Rule 5 for revocation after the one year period?

(D) Is the requirement for the presence of the Attorney General, in A.R.S. § 32-703, jurisdictional or directional?

After studying the above four questions, it is the conclusion of this office that should the above questions be raised in Court by an ex-licensee, there would be a strong possibility that the Court would find the hearing defective for failure to comply with one of the above requirements. We therefore suggest that in order to avoid the possibility of having a revocation order questioned, that the Board at its next meeting give notice of an original hearing to the parties who have failed to pay their fees, and the Attorney General be present at the hearing.

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III. Does A.R.S. § 32-703 authorize the Board to charge a fee of \$10.00 for late payment of a \$20.00 registration fee?

The provisions of A.R.S. § 32-703 reads as follows:

"§ 32-703. Rule making powers of board

The board may adopt, and amend from time to time, regulations for the orderly conduct of its affairs and for the administration of this chapter. The board may also prescribe, and amend from time to time, rules of conduct appropriate to establish and maintain a high standard of integrity and dignity in public accounting."

In A.R.S. § 32-730A, we find a specific authorization to charge a registration fee. By reason of the fact that the Board has only what authority is given to it by statute, and in this case the statute has specifically set a \$25.00 maximum as to registration fees, it is the opinion of the Attorney General that a provision for a penalty of \$10.00 is void in a case such as this, wherein there is a registration fee of \$20.00. The penalty provision being void, it cannot be interpreted to mean \$5.00 and thereby not exceeding the \$25.00 maximum statutory limit, notwithstanding the provisions of A.R.S. § 32-703.

With cordial best wishes.

Very truly yours,

WADE CHURCH  
The Attorney General

FRANKLIN K. GIBSON  
Assistant Attorney General

FKG:c

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