

LETTER OPINION
99-L-65

August 6, 1999

Mr. James S. Abbott
Executive Director
North Dakota State Board of Accountancy
2701 S Columbia Rd
Grand Forks, ND 58201-6029

Dear Mr. Abbott:

Thank you for your letter asking whether the new experience requirement adopted during the 1999 Legislative Session applies to applicants who receive their initial certificate during the year 2000. If not, you further ask whether the State Board of Accountancy has discretion to impose an experience requirement on applicants for a certificate during the year 2000.

Effective August 1, 1999, the State Board of Accountancy (Board) may adopt administrative rules establishing experience requirements for applicants for a certificate issued by the Board. See N.D.C.C. § 43-02.2-03(5)(f)(3), as amended by 1999 H. 1150, § 3. In the same bill, the Legislature amended N.D.C.C. § 43-02.2-04 to include a new subsection (14), which provides as follows:

After December 31, 2000, an applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of services or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. This experience must be verified and must meet any other requirements prescribed by the board by rule. This experience is acceptable if it was gained through employment in government, industry, academia, or public accounting. This experience requirement does not apply to those who received a certificate from this state prior to January 1, 2000.

Mr. James S. Abbott
August 6, 1999
Page 2

1999 H. 1150, § 4 (emphasis added).¹

The question presented in your letter regarding the new experience requirement in N.D.C.C. § 43-02.2-04(14) implicates two conflicting rules of statutory construction. The plain and literal meaning of a statute should not be disregarded under a pretext of pursuing its spirit. N.D.C.C. § 1-02-05. Here, the new experience requirement applies only to persons who are "applicants" for an initial certificate after December 31, 2000. Accordingly, if a person receives a certificate before that date, the person is no longer an "applicant" and does not have to satisfy the experience requirement.

At odds with this interpretation is the rule that all parts of a statute must be construed to have meaning because the law neither does nor requires idle acts. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985); N.D.C.C. § 31-11-05(23). The last sentence in N.D.C.C. § 43-02.2-04 would appear to have little meaning unless it was interpreted to include the negative inference that the experience requirement applies to those who received a certificate after January 1, 2000.

"The sole object of statutory construction is to ascertain and give effect to the purpose and intent of the lawmakers, and all rules of statutory construction are subservient to, and intended to effectuate, such object." City of Dickinson v. Thress, 290 N.W. 653 (N.D. 1940). The legislative history of N.D.C.C. § 43-02.2-04(14) is not helpful; the testimony presented to legislative committees simply states that existing licensees will be "grandfathered out" of the bill. Hearing on H. 1150 Before the Senate Committee on Industry, Business and Labor 56th N.D. Leg. (February 24, 1999) (Written testimony of Dick Brammel).

It is my opinion that the intent of the Legislature in adopting N.D.C.C. § 43-02.2-04(14) is reflected more clearly in the provision which limits the application of that new subsection to those who are applicants for an initial certificate after December 31, 2000. It is likely that the purpose of the last sentence of N.D.C.C. § 43-02.2-04(14) was not to leave the negative inference that those receiving their certificate during the year 2000 were subject to the new experience requirement. Instead, I suspect the purpose of that

¹ The only experience requirement previously imposed in N.D.C.C. ch. 43-02.2 was the option of showing four years of work experience instead of a college degree in accounting. N.D.C.C. § 43-02.2-04(5)(a). This optional provision is not relevant to the additional requirement imposed under N.D.C.C. § 43-02.2-04(14).

Mr. James S. Abbott
August 6, 1999
Page 3

sentence was to reiterate, for the benefit of those holding certificates when the legislation was considered and passed, that they will not be subject to the new experience requirement.

Notwithstanding the last sentence of N.D.C.C. § 43-02.2-04(14), it is my opinion that the plain language of the new experience requirement in that subsection is limited to individuals who have applied for, but not yet received, their initial certificate from the Board on or before December 31, 2000. In other words, the new requirement does not apply to individuals who receive their initial certificate during the year 2000.

My answer to your first question does not ignore the last sentence of N.D.C.C. § 43-02.2-04(14) or deprive that sentence of its meaning. Since the answer to your first question is no, you further ask whether the Board could impose a similar experience requirement on individuals who apply for an initial certificate during the year 2000. As mentioned earlier in this opinion, under the law in effect beginning on August 1, 1999, the Board will have specific authority to establish experience requirements by administrative rule. See N.D.C.C. § 43-02.2-03(5)(f)(3), as amended by 1999 H. 1150, § 3. Reading this provision in conjunction with the last sentence in N.D.C.C. § 43-02.2-04(14), the Board is prohibited from imposing an experience requirement on individuals who received their initial certificate before the year 2000. In addition, the Board is required to impose an experience requirement on individuals who receive their initial certificate after the year 2000. However, because of the way the last sentence in N.D.C.C. § 43-02.2-04(14) is worded, the Board is not precluded from imposing an experience requirement on applicants for an initial certificate during the year 2000. In other words, for certificates granted by the Board during the year 2000, it is my opinion the Board has discretion to impose an experience requirement by administrative rule under its general authority in N.D.C.C. § 43-02.2-03(5)(f)(3).

Sincerely,

Heidi Heitkamp
Attorney General

jcf/vkk