Recent Legislation

CONSTITUTIONAL LAW—POLICE POWER—VALIDITY OF STATUTE—PRACTICE OF PUBLIC ACCOUNTANCY WITHOUT CERTIFICATE.—An Illinois statute passed in 1927 makes it unlawful to perform or offer to perform for the public generally services which are included in the statutory definition of "public accountant" without a certificate granted by the Department of Registration and Education, Ill. Rev. Stat. 1927, Ch. 110½, Secs. 7-9. The statute, so far as it relates to the services coming within its scope, follows:

> (1) Performing audits or preparing financial statements for municipal corporations, public utilities, banks, building and loan associations, trust estates (except when employed by the *cestui qui* trust), insurance companies and charitable organizations which receive and dispense funds donated by the public.
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> (2) Preparing or vouching for the accuracy of financial statements or any business, knowing that such statements are to be used, (a) for the information of stockholders or inactive or silent parties in such business, (b) as an inducement to any person to invest in or extend credit to such business, or (c) for filing in the office of the Secretary of State under the provisions of the "Illinois Securities Act."

However, any of the acts described may be performed by one who does not perform or offer to perform such acts for the public generally.

This statute was passed to replace a prior one held unconstitutional in 1926. Laws 1925, p. 505. The earlier statute provided that one is deemed to be engaged in the practice of public accountancy "when he performs accounting or auditing service as distinguished from bookkeeping, on a fee basis, per diem or otherwise for more than one employer," and required a certificate as a condition precedent to the practice of the business of public accounting. It was held unconstitutional as an unreasonable exercise of the police power. *Frazer v. Shelton* (1926), 320 Ill. 253, 150 N. E. 696, 43 A. L. R. 1086. In accord with the Frazer case is *State v. Riedell* (1924), 109 Okla. 35, 233 P. 684, 42 A. L. R. 765.

It is well settled that a state may prohibit one from holding himself out as a certified public accountant without first having met the statutory requirements, on the ground that it is to the public interest that no one shall use a term indicating that he has been examined and certified as an accountant when such is not the fact. *Lehmann v. State Board of Public Accountancy* (1922), 208 Ala. 185, 94 So. 94; *Henry v. State* (1924), 97 Tex. Cr. R. 67, 260 S. W. 190; *People v. Marlowe* (1923), App. Div. 203 N. Y. S. 474. However, none of these cases goes to the length of holding that the state may prohibit the practice of the *profession* by one who does not hold the certificate. They merely hold it constitutional to restrict the use of the term "certified." The only possible basis for upholding the constitutionality of the

1927 statute is that it is a valid exercise of the police power of the state. "The term 'police power' comprehends the power to make and enforce all wholesome and reasonable laws and regulations necessary to maintain the public health, comfort, safety, and welfare." *Frazer v. Shelton, supra; State ex rel. Short v. Riedell, supra.* A citizen has the right to pursue ordinary trades or callings, subject, however, to the reasonable exercise of the police power. *Allgeyer v. Louisiana* (1897), 165 U. S. 578, 41 L. Ed. 832, 17 S. Ct. 427. The question in each case is whether the business regulated affects the public health, comfort, safety, or welfare. It is undisputed that such professions as medicine or law do affect the public welfare. As for accountancy, can it be said to create any perceptible effect upon the public? True, an audit of a municipal corporation is a matter of public concern, but the work of the accountant in a private business does not ordinarily affect the public welfare. Thus, the effect of the 1925 statute was to restrict the right of the owner of the business to make a private contract (that business being only of private concern) and also to deprive accountants not certified of the right to follow the occupation for which they qualified themselves by the expenditure of time and work.

The 1927 statute attempts to limit the scope of the earlier definition of a public accountant. So far as it concerns the making of audits for municipal corporations, it is no doubt valid. Once it goes beyond that each section must be carefully scrutinized to determine whether the business does in fact affect the public welfare. "In order to say that private business must, in the interest of public welfare, employ one certified by the state, it must appear that the effect of an audit of that business is a matter of public welfare and not of private concern." *Frazer v. Shelton, supra.* Applying this test, it is possible that (a) and (b) of (2) may be held invalid, and portions of (1) are near the border line. J. N., '29.

CONSTITUTIONAL LAW—VALIDITY OF DEATH PENALTY FOR ROBBERY.—The increasing severity of recent punitive legislation is evidenced by an act of the Missouri Legislature making robbery with a deadly weapon punishable by death. This recent addition to the similar legislation of other states providing for more severe punishment for the convicted felon reads as follows:

> Sec. 3310. Every person convicted of robbery in the first degree by means of a dangerous and deadly weapon shall suffer death, or be punished by imprisonment in the penitentiary for not less than ten years. Laws of 1927, p. 174.

Previously, Sec. 3310, R. S. Mo. 1919, had provided for a sentence of imprisonment in the penitentiary for not less than five years for any person convicted of robbery in the first degree. Several states have laws providing for the infliction of the death penalty as the maximum sentence for persons convicted of robbery with a deadly weapon. Okl. Comp. Stat. Ann. 1926, Secs. 1793-1801; Tex. Revised Crim. Stat. 1925, Sec. 1408. Alabama, however, does not distinguish between robbery with or without a deadly weapon, making this crime punishable "at the discretion of the jury, by death, or by