

1980 WL 120979 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 24, 1980

***1 Re: Board Resolution of November 6, 1980**

Mr. R. Larry Kight
Director
South Carolina Board of Accountancy
P. O. Box 11376
Columbia, South Carolina 29211

Dear Larry:

You have requested my opinion as to whether the Board's resolution of November 6, 1980, would raise equal protection problems. The resolution provides that a certificate of an applicant's experience by a CPA in public accounting shall be accepted as conclusive proof of such experience, without further verification by the Board. Implicit in this resolution is the fact that certification by CPAs in private industry must be verified before the Board will accept the applicant's work experience.

It is clear that experience is a prerequisite to licensing in South Carolina. [Section 40-1-190 of the Code](#) requires two years experience under a CPA or three years of other accounting experience. This requirement has been further defined by the Board in its Rule 1-7. The work experience requirement has been upheld in numerous decisions. *See*, 70 ALR2d 444, Section 6; [Davis v. Sexton](#), 221 App. Div. 233, 207 N.Y. Supp. 377 (1925); [Wee v. Board of Accountancy](#), 452 P.2d 94 (Hawaii); [Duggins v. N.C. St. Bd. of C.P.A. Examiners](#), 294 N.C. 120, 240 S.E.2d 406 (1978). It is my opinion that the Board's resolution does not involve a suspect classification nor a fundamental interest specifically guaranteed by the Federal or State Constitution. Therefore, the strict scrutiny or the compelling state interest test would not be required. *See*, [Duggins](#), *supra*. Instead, we must examine the Board's resolution applying the minimum scrutiny test, i.e., whether the classifications complained of are reasonably related to the legislation and disclose no invidious discrimination. If the Board's resolution contains classifications, I would assume classes to be: (1) certification of work experience by a CPA in public accounting and (2) a certification by a CPA in private industry. This same classification was examined by the North Carolina Supreme Court in [Duggins](#) and found to be reasonably related to the purpose of the legislature and disclosed no invidious discrimination. In your letter you state that persons in public accounting are more likely to be engaged in the type of work and function that would be used in the application of generally accepted auditing standards to financial statements than those in private industry or governmental accounting. A similar justification was proffered by the Accountancy Board in [Duggins](#) and upheld by the North Carolina Supreme Court. I am enclosing a copy of the [Duggins](#) decision for your information.

I would like to point out to you that although the Board has passed a resolution, in order for it to have the effect of law, it must be passed as a regulation pursuant to the South Carolina Administrative Procedures Act. I am sure you are probably aware of that fact. If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

***2** Richard B. Kale, Jr.
Senior Assistant Attorney General

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