



REGULATORY AGENCY ACTION

barred by the statute of frauds, which requires that representations regarding the creditworthiness of a third party be in writing and signed by the attester. The court acknowledged two narrow exceptions to this rule: the doctrine of estoppel (where a fiduciary relationship exists between the bank and the accounting firm), and where the defendant derives some benefit from the transaction. The court stated that "[n]either circumstance is extant in this case," and ruled that Ernst & Young was not attesting to the financial soundness of Z Best.

In dissent, Justice Earl Johnson argued that the validity of the review and the bank's reliance on the firm's assertions are questions of fact and should be adjudicated. According to Justice Johnson, "[t]he implications of this case go far beyond one bank and one accounting firm.... This state and this nation have entered an era where many innocent citizens, taxpayers, bondholders, and shareholders alike, are being asked to bear the financial burden for fraudulent business arrangements—and often the resultant failure of banks and similar institutions—they had nothing whatsoever to do with. How can we ask them to do so if the courts let off the hook those, including accountants, who are not totally innocent—indeed whose own actions may have contributed to the perpetration of the fraud and to the ensuing losses.... As between innocent taxpayers and negligent (or worse) accounting firms, who should bear the cost...?" He further noted that the majority decision regarding the absence of duty, "if followed by other California courts, could insulate all accountants from responsibility for representations made about and in their written review reports."

RECENT MEETINGS:

At the Board's January 31 meeting, the Administrative Committee reported that 300 of BOA's pending disciplinary cases were received by the Board prior to 1988. Approximately half of these cases remain within the purview of the Administrative Committee; the rest reside in the Attorney General's Office, the Department of Consumer Affairs' Division of Investigation, or the Office of Administrative Hearings.

Also in January, BOA's Continuing Education Committee recommended that nonpracticing licensees be required to complete at least 60 hours of continuing education (CE) for each two-year renewal period (30 hours per year). A trade association representative stated that nonpracticing licensees should be subject to the same 80-hour biennial CE requirement as those who are actively

performing public accounting services. The Board decided to research this issue further and revisit it at its September meeting.

At the Board's January meeting, Ira Landis was elected BOA President, taking over for Jack Kazanjian. Janice Wilson was elected Vice President, filling the position left open by Mr. Landis' advancement to President. Jeffery Martin was reappointed as Secretary-Treasurer.

FUTURE MEETINGS:

To be announced.

BOARD OF ARCHITECTURAL EXAMINERS

*Executive Officer: Stephen P. Sands
(916) 445-3393*

The Board of Architectural Examiners (BAE) was established by the legislature in 1901. BAE establishes minimum professional qualifications and performance standards for admission to and practice of the profession of architecture through its administration of the Architects Practice Act, Business and Professions Code section 5500 *et seq.* The Board's regulations are found in Division 2, Title 16 of the California Code of Regulations (CCR). Duties of the Board include administration of the Architect Registration Examination (ARE) of the National Council of Architectural Registration Boards (NCARB), and enforcement of the Board's statutes and regulations. To become licensed as an architect, a candidate must successfully complete a written and oral examination, and provide evidence of at least eight years of relevant education and experience. BAE is a ten-member body evenly divided between architects and public members. Three public members and the five architects are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

MAJOR PROJECTS:

Regulatory Changes. BAE is in the process of amending section 134, Title 16 of the CCR, to ensure that all types of architectural businesses are required to advertise similarly. Currently, section 134 allows architectural partnerships whose business names consist of the surnames of its general partners who are licensed architects to forego having to identify in their title the name of a licensed architect and the fact that he/she is a licensed architect. The proposed change under discussion since September 1990 would require all architectural

partnerships to list in their title or designation the name of a general partner and the fact that he/she is a licensed architect. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 48 and Vol. 10, No. 4 (Fall 1990) p. 52 for background information.) At its January 18 meeting, the Board decided not to adopt the proposed amendment as written. BAE hopes to rewrite the proposal, publish the modified version by the end of March, and schedule a public hearing in May.

BAE Adopts Regulation Implementing New Architect Stamp Requirement. Effective January 1, 1991, AB 1005 (Frazee) (Chapter 94, Statutes of 1990) requires architects to affix a stamp to all plans, specifications, and instruments of service when submitting them to a governmental entity for approval or issuance of a permit. Because AB 1005 did not provide specific language describing the size, shape, and type of stamp, the Board adopted proposed regulatory language resolving this issue at its January 18 meeting. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 48 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 68 for background information.) New section 136, Title 16 of the CCR, would require that the stamp be not less than one inch in diameter in order to ensure that the stamp will be easy to see and read, and not more than two inches in diameter since it is standard practice in the design industry to use this size. The required dimensions are consistent with the dimensions of stamps used by architects and engineers throughout the country. The new regulatory section awaits review and approval by the Office of Administrative Law.

Americans With Disabilities Act Accessibility Regulations Published. The federal Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*, established comprehensive civil rights protections for disabled people, by generally requiring that newly built or altered restaurants, hotels, theaters, businesses, retail stores, shopping centers, and malls, as well as state and local government offices, transit facilities, and vehicles, must be usable by persons with disabilities.

The U.S. Department of Justice delegated authority to draft and enforce the implementing regulations to the U.S. Architectural and Transportation Barriers Compliance Board (ATBCB). ATBCB's proposed regulations appeared in the *Federal Register* on February 22; hearings on these regulations were scheduled to take place in San Francisco on March 18 and 19. Under the Act, the ATBCB is required to publish its final guidelines by April 26.



Although the new federal access requirements have not been finalized, California's State Building Standards Commission estimates that 20-30 minor modifications of current building accessibility regulations pertaining to public accommodations and related facilities will be needed to bring them into compliance. It is expected that a uniform method for handling appeals regarding access issues will have to be developed to assure consistency throughout the state.

LEGISLATION:

AB 766 (Frazee), as introduced February 26, would officially change the California State Board of Architectural Examiners' name to the California Board of Architectural Examiners; change references from "architectural corporation" to "professional architectural corporation"; delete the requirement that examination questions regarding exterior and interior barrier-free design be reviewed by an ad hoc advisory committee of disabled persons appointed by the Department of Rehabilitation; and provide that a license which has expired may be renewed at any time within five years after its expiration, upon the filing of an application for renewal and payment of all accrued and unpaid renewal fees. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

RECENT MEETINGS:

At its January 18 meeting, BAE elected its officers for 1991. Lawrence Chaffin, Jr., was elected president; Betty Landess was elected vice-president; and Dick Wong was elected secretary. All three are architects and have been members of BAE since 1986.

FUTURE MEETINGS:

To be announced.

ATHLETIC COMMISSION

Executive Officer: Ken Gray
(916) 920-7300

The Athletic Commission is empowered to regulate amateur and professional boxing and contact karate under the Boxing Act (Business and Professions Code section 18600 *et seq.*). The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members each serving four-year terms. All eight members are "public" as opposed to industry representatives.

The current Commission members are Bill Malkasian, Raoul Silva, Ara

Hairabedian, P.B. Montemayor, M.D., Jerry Nathanson, Thomas Thaxter, M.D., Charles Westlund, and Robert Wilson.

The Commission has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, and martial arts competitors. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical requirements. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of boxers, and the integrity of the sport of boxing in the interest of the general public and the participating athletes.

MAJOR PROJECTS:

Executive Officer Announces Retirement. At the Commission's March 15 meeting, Executive Officer Ken Gray announced his plan to retire in July. Gray's announcement was apparently a surprise to the entire Commission; however, it follows allegations by Commissioner Jerry Nathanson of budget irregularities and Gray's lack of leadership on important issues. In fact, Nathanson had tried unsuccessfully to place a letter he had written to Gray containing the allegations on the March 15 agenda; Nathanson's charges are expected to be discussed at the Commission's May 17 meeting.

Commission Chair Charles Westlund stated that the Commission would begin a selection process to find Gray's successor; possible candidates include Steve English, the Commission's assistant executive officer in charge of its Los Angeles office, and Don Muse, a Washington boxing administrator who served briefly as California's assistant executive officer.

Neurological Exam Causes Controversy. Annual neurological examinations are presently required of all professional boxers competing in California. Although the tests are intended to protect the health and safety of boxers, they have been widely criticized as being culturally and educationally biased, and as being inadequate in detecting neurological injury. Executive Officer Ken Gray would like to establish more controls on the examination but, due to severe budget restraints facing the Commission, is unable to do so at this time. When asked about the possible bias of the exam, he

said that each question is thoroughly examined and if there are any signs of bias, the question is thrown out. A second examination is administered to fighters who fail the exam; the second exam attempts to determine whether other factors besides neurological impairment could be contributing to the results. The neurological exam requirement is the subject of several pieces of pending legislation (see *infra* LEGISLATION).

Regulatory Update. At the Commission's March 15 meeting, it held a public hearing on proposed amendments to section 282 and the proposed adoption of section 288, Title 4 of the CCR. (A previously-scheduled February 15 hearing was cancelled and postponed until the Commission's March 15 meeting.) The proposed amendments to section 282 would update the vision requirements for professional and amateur boxers and martial artists based upon the latest advancements in the field of ophthalmology; proposed new section 288 would establish specific criteria for the approval of ringside physicians. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 49 for detailed background information on these changes.) The Commission adopted both regulatory proposals; at this writing, the rulemaking package has not yet been submitted to the Office of Administrative Law for approval.

LEGISLATION:

AB 649 (Floyd). Existing law requires the Athletic Commission to establish a mandatory pension plan for professional boxers who engage in boxing contests in California. As introduced February 21, this bill would provide that the pension plan (and contributions thereto) is not mandatory but optional for professional boxers who voluntarily elect in writing to participate in the plan. The Commission supports this bill, which is pending in the Assembly Governmental Organization Committee.

AB 647 (Floyd), as introduced February 21, would delete existing licensure requirements for ring announcers; delete the Commission's authority to license doormen, ushers, and booking agents; repeal an existing provision prohibiting any person under the age of 16 years from attending any prizefight; and exempt professional wrestling exhibitions from provisions regulating corrupt practices in sporting events. This bill would also modify existing law which provides that at every contest, a licensed physician paid by the promoter shall be in attendance, and that the physician's fee shall be paid by the promoter to the Commission to be remitted to the physician. This bill would eliminate the