



SOCIETY OF ACTUARIES

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EXPRESSIONS OF OPINION BY THE SOCIETY OF ACTUARIES

by Preston C. Bassett

The right of the Society to publicly express a professional opinion and the procedures to be followed are governed by Article X of the Society's Constitution (Year Book, p. 327). Such opinions are restricted to "matters within the special professional competence of actuaries."

Several actuaries believe that the brief filed with the Supreme Court in connection with the Manhart case, was an expression of opinion of the Society of Actuaries and, therefore, the conditions of Article X should have been followed. The position of the Board of the Society of Actuaries was that the brief was not an expression of opinion, but rather a statement of facts which they believed to be important for the Supreme Court to be aware of before rendering a decision. (See "The Actuary" of May 1978).

As a result of the contrary feeling on the part of several actuaries, the Board asked that a subcommittee of the Board review Article X and report on whether Article X should be changed, modified, or left as is. The charge to the subcommittee was, regardless of the Manhart case, to review Article X to see that it properly expressed the conditions under which opinions should be presented.

Article X was adopted several years ago only after considerable discussion and a trial period, because many members of the Society felt that it would be possible for a small group to express an opinion which could be contrary to the wishes of other members of the Society. Those interested in the discussion of this topic should read the minutes of the Annual Meeting in 1966 (TSA XVIII D 691). At that time the Society could not express an opinion on any matters. The first attempt to change this provision was narrowly defeated and further study was given to the topic.

In 1970, the current provision of Article X was adopted on a temporary basis to be automatically cancelled after four years. This was to provide a trial period during which the members could determine the usefulness of expressing opinions. During the trial period, the Article was used only once or twice. Then, in 1974, at the expiration of the temporary period, Article X was adopted as a permanent provision of the Constitution.

At the last meetings of Executive Committee of the Board and the full Board various aspects of Article X were discussed

at considerable length. They considered whether or not the Society should ever express an opinion on any topic. Since the American Academy of Actuaries is the principal body for representing the profession to the public, this function might be unnecessary for the Society, but rather left entirely in the hands of the Academy. However, most of the members of the Board felt that, since the Society is the basic educational and research organization, it should on its own at appropriate times express opinions in accordance with Article X. The Board emphasized that it should be restricted to matters "within the special professional competence of actuaries." There was also considerable discussion as to what might constitute an opinion and what might constitute a fact. The responsibility for this determination would be left with the Board. In doubtful cases the presumption would be that it would be an opinion unless the Board ruled otherwise. As a result of these extensive discussions, the Board adopted the following resolutions:

"RESOLVE, that the Board of Governors of the Society of Actuaries following a careful review of Article X of the Constitution believes that no changes are necessary in the wording of this article."

The Board did not stop there, however, but went on and adopted the next resolution:

"RESOLVE, that the Board approves the following statement of the communication to the membership of the Society:

The Board has carefully considered the comments of those challenging the Board's actions on the Manhart case and believes that the Board's actions were based on an intention to express facts rather than opinion and hence were proper in the context of Article X of the Constitution. The Board further believes that the statements in the brief were substantially factual. As a result of the questions raised regarding the handling of the Manhart matter, the Board and the Executive Committee have carefully reviewed Article X of the Constitution and believe that it is adequate for instances where the Society, the Board, or its committees have occasion to express opinions on matters within the special professional competence of actuaries". □

THE MANHART CASE

by A. C. Webster

The response to the May editorial inviting comments on the Manhart case was small in number but nonetheless interesting. Four of the writers apparently agreed wholly with the dissidents. Of the others, about one half were inclined to agree that the brief represented an expression of opinion but were not, on that account, highly critical of the Board's action. Several of the writers thought that the Board might well have used the procedure in the second paragraph of Article X rather than the procedure mentioned in the first paragraph.

Space does not permit printing the complete letters, and the following is a synopsis (in alphabetical order). I trust

that the writers will excuse the editor for his severe use of the blue pencil.

Clyde D. Beers—is in complete agreement with Messrs. Daskais and Anderson. "Many would rather fight different battles than perpetuating sex distinctions in pension benefits".

George Cherlun—points out that there would be no controversy had the Society followed paragraph 2 of Article X which "would have been equally as instructive for the Supreme Court".

Raymond E. Cole—suggests that because of the difficulty in distinguishing between fact and opinion, Article X might be interpreted as applying not only to briefs but to all public pronouncements of the Society.

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Ralph E. Edwards—cites the history of Article X and comments: "At the time of constitutional change the image foreseen was of public hearings before legislative bodies with ample time for lengthy procedures. There was no provision made for the quasi public milieu of a legal brief with a limited (if not inadequate) time available". He believes that the Board of Governors acted in good faith and that the brief was well done in view of the circumstances.

Patrick F. Flanagan—considers that the submission of the brief by the Society was improper. He comments further that the Society is an international learned Society and as such it should not become involved in national political controversies. If actuarial input is required in such a controversy, it can be provided by the national organizations, the Canadian Institute of Actuaries and the American Academy of Actuaries.

Charles M. Larson—agrees that "the brief was clearly one sided". He further comments: "The use of uni-sex tables may require some adjustments for actuaries. They will not be overwhelming. The law supersedes the comfort of actuaries. Uni-age tables would require us to take a stand. Wait for that fight. We can't win this one."

Eugene C. Foge—(Mr. Foge is a Vice President of the Cologne Life Reinsurance Company) writes as follows: "I have just wasted a lot of time wading through the May issue devoted to Article X and the Manhart brief. I am not an actuary, but I finally figured out where all those bad jokes about actuaries come from. Tell the truth now, really. You guys make them up yourselves, don't you, then you send them to the Supreme Court and publish them in *The Actuary*."

Joseph Goldberg—regrets the apparent division in the ranks of members of the profession having been brought into the open by the Manhart case. The use of uni-sex tables he considers is a valid subject for discussion within the profession, not without. He believes that the dissent, even if valid, may have harmed the profession more than any "incorrect" opinion might have.

Walter McLaughlin—writes: "While not in complete agreement with its structure on all the points raised on the whole, I thought it (the brief) was a good presentation and that those who worked on it should be commended. I have felt that the Society and the Academy have failed to be overly visible in the past few years during which period many laws and regulations have been adopted affecting the work of most members of our profession."

Charles P. Moore—writes: "... I congratulate the actuaries (including dissidents) who kept abreast of the Manhart case and recognize that there could be some long-range, deep and far-reaching implications and effects on our profession as a result of a decision in that case. It is comforting to know that people are looking at these situations and reacting.

"... I think we accomplished what we needed to and wanted to get accomplished and will just have to be a little more careful in the future when one or more people are speaking ex-cathedra for our professional group."

David Ogden—considers that the Manhart case brief was indeed an opinion and that it would appear that the brief should have been presented as an opinion of the Board of

Governors if two thirds of the Board supported it. The brief "urged the court to avoid a broad decision—specifically a broad decision that would outlaw sex differences in pension plans. This is an opinion as far as I can see."

Ray M. Peterson—relates some interesting history about Title VII of the Civil Rights Bill as follows:

"Title VII of the Civil Rights bill, initially, did not mention 'sex.' A Senator from a southern state, as a mischievous prank or an effort to forestall the civil rights legislation, introduced an amendment that included 'sex' along with 'race, color, religion and national origin.' Perhaps to his surprise and, no doubt, disappointment, his amendment was accepted!

Would the current turmoil over sex discrimination never have arisen if the Senator had not introduced his amendment?

In view of the late introduction of the amendment, can it really be said with confidence that the Congress did give adequate consideration to the effect of the inclusion of 'sex'?"

Allan W. Ryan—is inclined to agree with Anderson that this matter is more of a political than an actuarial question. He also considers that "consistency requires that uni-sex factors be used for conversions to optional forms and early retirement in pension plans where equal benefits are provided (under the normal form of retirement income) to males and females."

Paul E. Sarnoff—considers that the brief falls under the category of an opinion and is subject to the conditions of Article X. He also comments "I would hope that all would now recognize the brief is put together under great time pressure and that it is better for a group of basically dispassionate experts to supply essentially practical guidance than to hope that the court without the aid of these experts could have avoided damage to the industry and the public." Finally speaking as the Chairman of the Society Committee on papers, he completely disagrees with Anderson's opinion. He personally thinks that the brief would meet the qualifications for acceptance of papers.

William R. Williamson, Jr.—comments "Although many peripheral considerations were brought into the Manhart brief under discussion, the prime argument rested on mortality differences by sex, the existence of which I had always thought was beyond dispute in the actuarial . . . profession. Would Article X really estop the furnishing of published statistics and derived mathematical projections in court without approval of members who have already demonstrated their agreement in these tenets in the actuarial examinations?"

David H. Wood—concludes that the brief was submitted in violation of the Society's constitution because, however inadvertently, it did explicitly express opinions in one or several places. He further comments "I accept and sympathize with the original intention underlying the brief—to support an informed decision by the court by presenting facts which it should be aware of, stopping short of urging the court how to decide its case. This would have represented a public service which I think the Society and Academy should drive to provide . . . a presentation of facts needs careful review to be sure they are the right facts presented in the right context." □