

# MAINE STATE LEGISLATURE

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September 15, 1972

Lawrence E. Parker, Jr., CPA  
Secretary  
Maine Board of Accountancy  
84 Harlow Street  
Bangor, Maine

Dear Mr. Parker:

Re: Applicability of The Professional  
Service Corporation Act to  
Certified Public Accountants and  
Public Accountants

SYLLABUS:

The Professional Service Corporation Act, 13 M.R.S.A. §§ 701 et seq., is applicable to certified public accountants and public accountants. To the extent that 32 M.R.S.A. §§ 3994 (6) and 3994 (9) are inconsistent with The Professional Service Corporation Act, such provisions have been repealed, modified or restricted.

FACTS:

In 1967 the State Legislature enacted certain laws relating to the practice of public accountancy. Sections 3994 (6) and 3994 (9) of these laws (32 M.R.S.A. §§ 3961 et seq.) prohibited certified public accountants or public accountants from practicing their respective professions as a corporation. These provisions provided as follows:

"No corporation shall assume or use the title or designation 'certified public accountant', or 'public accountant', nor shall any corporation assume or use the title or designation 'certified accountant', 'chartered accountant', 'licensed accountant', 'registered accountant', 'enrolled accountant', or any other title or designation likely to be confused with 'certified public accountant' or 'public accountant', or any of the abbreviations 'CPA',

'PA', 'CA', 'EA', 'RA', or 'LA' or similar abbreviations likely to be confused with 'CPA'." (3994 (6) ).

"No person shall sign or affix a corporate name with any wording indicating that it is a corporation performing services as public accountant or auditors or composed of public accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement or to any report on or certificate to any accounting or financial statement." (3994 (9) ).

Without expressly repealing these statutes, in 1969 the Maine Legislature enacted The Professional Service Corporation Act (13 M.R.S.A. §§ 701 et seq.) which permits various types of professional persons to practice their respective professions as a corporation. The intent of the legislature in enacting this legislation is set forth in 13 M.R.S.A. § 202, as follows:

"It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization."

The term "professional service" is defined in § 703 (2) of the Act as follows:

"The term 'professional service' shall mean any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the effective date of this Chapter and by reason of law could not be performed by a corporation. By way of example and without limiting the generality thereof, the personal services which come within this chapter are the professional services rendered by certified public accountants, public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, podiatrists, chiropodists, architects, veterinarians, attorneys at law and life insurance agents." (Emphasis supplied.)

Section 716 of the Act provides as follows:

"This Chapter shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to incorporations, sales of securities or regulating the several professions enumerated in this chapter except insofar as such laws conflict with this chapter." (Emphasis supplied.)

QUESTION:

Has The Professional Service Corporation Act, 13 M.R.S.A. §§ 701 et seq. repealed, modified or restricted 32 M.R.S.A. §§ 3994 (6) and 3994 (9) to the extent that such provisions are inconsistent with the Act?

ANSWER:

Yes.

REASONS:

The Professional Service Corporation Act expressly recites that it is applicable to certified public accountants and public accountants. 13 M.R.S.A. § 703 (2). The Act further provides, in clear and unambiguous language, that the laws regulating the several professions enumerated in the Act are not repealed, modified or restricted except insofar as such laws conflict with the Act. 13 M.R.S.A. § 716.

In our opinion, sections 703 (2) and 716 of the Act demonstrate a clear intention on the part of the legislature to repeal, modify or restrict §§ 3994 (6) and 3994 (9) of the Accountancy laws, to the extent that those provisions are in conflict with the Act.

Well established principles of statutory construction, which have been conveniently summarized by the State Supreme Court in State v. Taplin, 247 A 2d 919 (1968), at p. 922, support our view:

" . . . we observe that repeals by implication are not favored. Arman v. Willinski, 1949, 144 Me. 116, 65 A. 2d 1, 7 A.L.R. 2d 1390. The legislature will not be presumed to have intended a repeal.

Inhabitants of Eden v. Inhabitants of Southwest Harbor, 1911, 108 Me. 489, 81 A. 1003; Harris' Case, 1924 Me. 68, 126 A. 166. However, implied repeals do exist and must be given effect based as they are on the rationale that 'the legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments, and the only one which is to be regarded as having the force of law'. Knight v. Aroostook Railroad, 67 Me. 291, 293. Nevertheless, implied repeals, provided no contrary legislative intent appears, will be restricted in scope to the extent of the inconsistency or conflict. State v. Bryce, 1968, Me., 243 A. 2d 726."

In the instant situation, the only meaningful interpretation of §§ 3994 (6) and 3994 (9) of the accountancy laws and The Professional Service Corporation Act, taken together, is that the latter Act is controlling and that the provisions of the accountancy laws, to the extent that they are inconsistent, are no longer of any force or effect. A contrary interpretation to the effect that certified public accountants and public accountants are permitted to practice their respective professions as corporations, but, in so doing, are prohibited from using the designations or titles of their profession, or from signing financial or accounting statements in the corporate name, effectively would preclude accountants from conducting business as a corporation, and would frustrate the express purposes of the Act.

Such an anomolous result should clearly be avoided. As stated in Emple Knitting Mills v. City of Bangor, 155 Me. 270, 133 A. 2d 118 (1959) at p. 274:

"A construction should be avoided which leads to a result clearly not within the contemplation of the legislature or which leads to a result which is absurd, even though the strict letter of the law may have to be disregarded."

It should be noted parenthetically that except for the conflict referred to above, §§ 3994 (6) and 3994 (9) are not affected by The Professional Service Corporation Act. The repeal is restricted in scope to the extent of the conflict, and, therefore, these provisions would still apply to any person or firm of certified public accountants or public accountants who did not comply with requirements of, or act in accordance with, The Professional Service Corporation Act.

Very truly yours,

Martin L. Wilk  
Assistant Attorney General

MLW:H