

MAINE STATE LEGISLATURE

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April 14, 1976

John H. Leasure, Chairman
Maine State Board for Registration of Architects
477 Congress Street
Portland, Maine 04111

Re: Opinion request

Dear John:

You have raised two questions regarding the formation of a corporation by architects. Your first question is as follows: If architects form a corporation today, must it be a professional corporation (under 13 M.R.S.A. § 701, et seq.)? The answer is negative.

The Professional Service Corporation Act was enacted in 1969 to enable professional persons to form a corporation to render a professional service. See 13 M.R.S.A. §§ 702, 705. Prior to 1969, however, it had already been lawful for a corporation to practice architecture pursuant to 32 M.R.S.A. § 202(2). 32 M.R.S.A. § 202(2), which was enacted in 1945 by Chapter 356 of the Public Laws (and which has not been amended since that time) states as follows:

"No corporation as such shall be registered to practice architecture in this State, but it shall be lawful for a corporation to practice architecture providing the chief executive officer of such corporation shall be a registered architect and all drawings and plans and specifications and supervision of construction or alterations of buildings or projects by such corporation shall be under the personal direction of such registered architect." (emphasis added)

1/ Before the enactment of the Professional Service Corporation Act, it had been unlawful for certain professional persons, such as dentists, to form a corporation to render a professional service. See, e.g., P.L. 1968, Chapter 544, Section 80, relating to dentists.

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13 M.R.S.A. § 704 of the Professional Service Corporation Act states that:

"This chapter shall not apply to any individual or groups of individuals within this State who prior to October 1, 1969 were permitted to organize a corporation and render professional services to the public by the means of a corporation, and this chapter shall not apply to any corporations organized by such individual or group of individuals prior to October 1, 1969. Any such individual or group of individuals or any such corporation may bring themselves and such corporation within this chapter by amending the articles of incorporation in such a manner so as to be consistent with all of this chapter and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within this chapter."

As noted above, it had been lawful for individuals to organize a corporation to practice architecture prior to October 1, 1969. Furthermore, 13 M.R.S.A. § 716 of the Professional Service Corporation Act clearly states that:

"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."

There is nothing in 32 M.R.S.A. § 202(2) that specifically conflicts with the Professional Service Corporation Act. 32 M.R.S.A. § 202(2) may be read in harmony with that Act, and it is a principal of statutory construction that statutes, "unless absolutely conflicting," are to be construed in such a way as to make them operate harmoniously. Cram v. Inhabitants of County of Cumberland, 148 Me. 515, 517 (1953); Maine Central Institute v. Inhabitants of Palmyra, 139 Me. 304 (1943).

2/ Architects are specifically enumerated in the Professional Service Corporation Act. See 13 M.R.S.A. § 703(2).

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Thus, it is our opinion that the Professional Service Corporation Act did not repeal 32 M.R.S.A. § 202(2), and we believe that the provisions of 13 M.R.S.A. §§ 704 and 716 show that the legislature intended to allow an architect to form a corporation today pursuant to 32 M.R.S.A. § 202(2).

Your second question is as follows: Can he have an engineer as a member of his corporation? There is nothing in 32 M.R.S.A. § 202(2) which would prohibit an architect forming a corporation pursuant to 32 M.R.S.A. § 202(2) from having an engineer as a member of his corporation. However, the statutory conditions of 32 M.R.S.A. § 202(2) must, of course, be met. Thus, the chief executive officer of the corporation must be a registered architect and all drawings, plans and specifications and supervision of the construction or alteration of buildings or projects by the corporation must be under the personal direction of the registered architect. In addition, reference should be made to the corporation's articles of incorporation, to see that the corporate purposes as stated therein are broad enough to allow for the work which the engineer intends to perform. (See Attorney General's Opinion to the Board for Registration of Architects, dated October 18, 1963). And care must, of course, be taken to see that there is compliance with any applicable statute relating to engineers.

Please do not hesitate to contact me if you have additional questions.

Very truly yours,

DAVID ROSEMAN
Assistant Attorney General

DR:mfe