

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 28, 1978

To Doris Hayes, Deputy

Dept. Secretary of State

From Steven Wright, Assistant

Dept. Attorney General

Subject Professional Service Corporation Organization

This is in response to your request for an opinion of this office as to whether a professional service corporation, organized under 13 M.R.S.A. c. 22, may amend its charter to permit operation of the corporation without a board of directors. We answer in the affirmative.

In its original form 13 M.R.S.A. § 706, as enacted by P.L. 1969, c. 411, provided:

Professional corporations shall be organized as set forth in sections 71 to 79, except less than 3 persons may meet to organize and such a corporation may have less than 3 directors.
(emphasis supplied).

While granting professional corporations the right to have less than 3 directors, this section assumed that the corporation would have a board of directors. The language of 13 M.R.S.A. § 710 also assumed management by a board of directors, but expressly allowed a professional corporation with only one shareholder to have only one director, and with only two shareholders to have only two directors. This language of 13 M.R.S.A. § 710 excepted professional service corporations from the requirement that a corporation have a board of directors with a minimum of 3 directors as provided in 13 M.R.S.A. § 371.* It should be noted that the Professional Service Corporation Act preceded the enactment of the Maine Business Corporation Act by more than two years. The Professional Service Corporation Act, 13 M.R.S.A. c. 22, was effective October 1, 1969, and the Maine Business Corporation Act was effective January 1, 1972. This is a significant fact as Title 13 contains no provision for the organization of "close" corporations; that is, a corporation without a board of directors, the shares of which are not sold to more than 20 persons, and in which the business is managed by the shareholders.

It seems apparent, therefore, that at the time the professional corporation law was enacted there was no legislative intent that these corporations could be organized in any manner inconsistent within Title 13 generally, except as specifically and expressly provided by chapter 22 of that Title. See, 13 M.R.S.A. § 714.

* Absent this exception, 13 M.R.S.A. § 714 would have made § 371 applicable to professional corporations by providing that Title 13 "shall be applicable to a corporation organized pursuant to this chapter"

With the enactment of the "Maine Business Corporation Act," Title 13-A, various sections of 13 M.R.S.A. c. 22 were amended. P.L. 1971, c. 439 which enacted the Maine Business Corporation Act, also, at §§ 12 and 13, amended 13 M.R.S.A. §§ 706 and 715, respectively, of the professional corporation act. 13 M.R.S.A. § 706 was amended to read "Professional corporations shall be organized as set forth in Title 13-A." 13 M.R.S.A. § 715 was amended to provide that professional corporations would be dissolved as provided in Title 13-A, rather than Title 13. Subsequent amendments to 13 M.R.S.A. §§ 713, 714 by P.L. 1971, c. 565, §§ 1-A and 2, respectively, provided that Title 13-A would thereafter control the procedures of professional corporations for registering names and undergoing mergers.

These various amendments evidence a legislative intent, notwithstanding the language of 13 M.R.S.A. § 714 with regard to the applicability of Title 13 to the professional corporation act, that Title 13-A, the Maine Business Corporation Act, should control at least certain aspects of professional corporate activities, i.e., organization, name registration, dissolution and merger.

Additional support for this position is found when we note that with the enactment of the Maine Business Corporation Act the Legislature repealed certain sections of Title 13. Most apposite to the instant discussion was the repeal of 13 M.R.S.A. c. 11, § 371, et seq., entitled "Directors and Officers." This included the repeal of the provision previously mentioned requiring all corporations to have at least 3 directors, from which requirement professional service corporations were exempted.

Therefore, with the amendment of 13 M.R.S.A. § 706, a professional corporation organized under 13 M.R.S.A. c. 22, the Maine Professional Service Act, was placed on the same footing as a business corporation organized under Title 13-A, the Maine Business Corporation Act, with regard to its organizational options.

13-A M.R.S.A. § 701, sub-§ 2 provides that a close corporation, "if its articles of incorporation expressly so provide . . . shall be managed by the shareholders of the close corporation rather than by a board of directors."

13-A M.R.S.A. § 802 authorizes a corporation to amend its articles of incorporation:

"in any and as many respects as may be desired, if its articles of incorporation, as amended, contain only such provisions as might lawfully be contained in original articles of incorporation on the effective date of the amendment."
(emphasis supplied).

This section provides existing corporations with the flexibility to amend their articles of incorporation to reflect statutory or other changes. This means, then, that a professional service corporation which may have existed prior to the enactment of Title 13-A may amend its articles of incorporation to effect organizational changes lawful at the time of the amendment. 13-A M.R.S.A. § 802, sub-§ 2 provides expressly that:

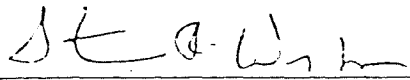
"a corporation may amend its articles of incorporation so as:

* * * * *

"O. To add, change or strike out any provision, not inconsistent with this Act or with law, relating to the business of the corporation, its affairs, its rights or powers, or the rights or powers of its shareholders, directors or officers, including any provision which is required or permitted to be set forth in the bylaws or in any agreement."

Thus, a professional service corporation may file an amendment to its articles of incorporation to provide for management by the shareholders in lieu of a board of directors if it meets the prerequisites for a "close" corporation set out in 13-A M.R.S.A. § 701.

It should be noted that shareholder management of a professional corporation is not inconsistent or in conflict with Title 13. With the amendment of 13 M.R.S.A. § 706 and the repeal of 13 M.R.S.A. c. 11, the Legislature provided that this type of corporation be organized under Title 13-A, the Maine Business Corporation Act. The language of 13 M.R.S.A. § 710, providing that professional service corporations can operate with fewer than 3 directors if it organizes with less than 3 shareholders, is not inconsistent with giving professional service corporations the additional option of organizing without any directors.


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