

penalize Mr. May for his past conduct: nevertheless I do not believe that the situation involving the IBM Corporation as principal tenant in a building in which Mrs. May has a substantial interest should be permitted to continue or that Mr. May should be permitted, in the future, directly or indirectly, to employ the services to any substantial degree of any person or firm that does considerable business with the University.

FRANK J. KELLEY,
Attorney General.

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ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS:

Stockholders in corporations which perform architectural, engineering or land surveying services do not have to be registered or licensed in such professions under Act 240, P.A. 1937, C.L. 1948 § 338.551 et. seq., provided the corporation is not organized under the professional service corporation act, Act 192, P.A. 1962, M.S.A. 1963 Rev. Vol. § 21.315 (1) et seq. Ownership of assets of a partnership performing architectural engineering or land surveying services does not in and of itself constitute the owner of such assets as a partner and such person would not be required to be registered or licensed in such profession.

No. 4627

June 26, 1968

Mr. Lenton G. Sculthorp, Director
Department of Licensing and Regulation
2nd Floor, Lafayette Building
Detroit, Michigan 48226

You have advised me that there are a number of corporations and partnerships in the State of Michigan offering architectural, professional engineering and land surveying services to the public, where the shares in the corporation, or the assets of the partnership, are owned wholly or in part by nonregistered persons. A so-called "dummy" corporation or partnership is formed with nonregistered persons owning the corporate stock or the assets of the partnership, but the officers and directors are registered in this State as architects, professional engineers or land surveyors. Therefore, you request my opinion to the following question:

"Could a 'dummy' corporation or partnership be formed in this state to perform architectural, professional engineering or land surveying services with nonregistered persons owning the corporate stock of the corporation or the assets of the partnership but the officers and directors or partners are registered in the State of Michigan as architects, professional engineers or land surveyors?"

The pertinent sections of the architects, engineers and surveyors registration act, Act 420, P.A. 1937, are Sections 1 and 17, being C.L. '48 §§ 338.551 and 338.567; M.S.A. 1957 Rev. Vol. §§ 18.84(1) and 18.84(17), respectively. Section 1 reads as follows:

"In order to safeguard life, health and property, any person practicing or offering to practice the profession of architecture, profession of engineering or of land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice the profession of architecture, the profession of engineering or of land surveying, in this state, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is an architect, a professional engineer, or a land surveyor, unless such person has been duly registered or exempted under the provisions of this act."

Section 17 reads as follows:

"An architectural or an engineering or a land surveying firm, or a co-partnership, or a corporation, or a joint stock association may engage in the practice of architecture, professional engineering, or land surveying in this state: Provided, That all partners, officers, and directors of such organizations shall be registered architects, registered professional engineers, or registered land surveyors."

It is to be noted that Section 17 specifically provides that all partners, officers and directors of such organizations shall be registered architects, engineers or land surveyors. There is no requirement in Section 17 that the stockholders of a corporation be registered in the profession. It is to be noted that stockholders generally do not perform the functions of a corporation unless they are officers or employees. The following appears in 18 Am. Jur. 2d, *Corporation*, § 13, p. 558.

"A corporation is for most purposes an entity distinct from its individual members or stockholders, who, as natural persons, are merged in the corporate identity, and remains unchanged and unaffected in its identity by changes in its individual membership. By the very nature of a corporation its property is vested in the corporation itself, and not in the stockholders. The stockholders, as such, do not have the power to represent the corporation or act for it in relation to its ordinary business, nor are they ordinarily personally liable for the acts and obligations of the corporation."

Under Section 1 of Act 240, P.A. 1937, *Supra*, those who practice or offer to practice the mentioned professions must be qualified. Section 17, *supra*, carries out this requirement by requiring all officers and directors to be registered professionals. The omission of stockholders from the language of Section 17 would indicate a legislative intent to exclude them from the requirement of being registered. *Sebewaing Industries Inc. v. Village of Sebewaing*, 337 Mich. 530.

In 1962 the Michigan legislature enacted the professional service corporation act, Act 192, P.A. 1962, being M.S.A. 1963 Rev. Vol. and 1968 Cum. Supp. § 21.315(1) et seq. This act, in Section 2 thereof, includes architects, professional engineers and land surveyors within its provisions. It also provides that a professional service corporation is a corporation which is organized under the act for the sole purpose of rendering professional service and has as its shareholders only individuals who them-

selves are duly licensed or authorized to render the professional service offered by the corporation.

Section 4 of the act authorizes an individual or group of individuals who are licensed to form a professional service corporation. Section 10 of the act specifically provides that no shareholder of a corporation organized under the act may sell or transfer his shares except to another individual who is eligible to be a shareholder.

Section 15 provides for an annual report of the corporation listing the names and addresses of all shareholders and certifying that all shareholders are duly licensed or otherwise legally authorized in this State to render the same professional service as the corporation. Any architectural, engineering or land surveying corporation incorporated under this act must have as shareholders only those licensed in the profession. However, Section 3 of the professional service corporation act provides that the act shall not apply to any corporation organized within this State prior to the passage of this act. If an architectural, engineering or land surveying corporation has been incorporated under the general corporation act, it may continue to have as shareholders those who are not licensed in the profession.

With regard to those corporations which have been formed subsequent to the effective date of the professional service corporation act, March 28, 1963, if such corporations were not incorporated under such act then they may also continue to have nonlicensed shareholders. There is no requirement in the professional service corporation act that all professional service corporations be incorporated under that act to the exclusion of the general corporation act, and therefore architects, engineers and land surveyors continue to have the privilege of incorporating under the general corporation act or the professional service corporation act.

You have also requested my opinion as to whether a person who owns partnership assets has to be licensed in the profession. The statute, Act 240, P.A. 1937, *supra*, is clear that any individual who is a partner must be licensed as an architect, engineer or land surveyor. However, the facts that you have forwarded with the opinion request are not sufficient to determine whether, in fact, a partnership exists as between the persons engaged in the profession and the owner of some of the partnership assets.

There are many criteria for determining the existence of a partnership but, generally, a community of interest in the business, property, and profits and losses, together with an agreement between the parties, is necessary in order to find the existence of a partnership. In this regard, see: *Wells v. Babcock* (1885), 56 Mich. 276; *Johnson v. Fowler* (1888), 68 Mich. 1; *Dumanoise v. Townsend* (1890), 80 Mich. 302; *Webb v. Johnson* (1893), 95 Mich. 325; *Moore v. DuBard* (1947), 318 Mich. 578.

The provisions of the uniform partnership act (Act 72, P.A. 1917 M.S.A. 1964 Rev. Vol. § 20.1 et seq., C.L. 1948 § 449.1 et seq.) and the uniform limited partnership act (Act 110, P.A. 1931, M.S.A. 1964 Rev. Vol. § 20.51 et seq., C.L.S. 1961 § 449.201 et seq.) are pertinent in seeking the elements of a true partnership association.

Section 7 of the uniform partnership act, *supra*, provides in pertinent part:

"In determining whether a partnership exists, these rules shall apply:

"(1) * * *.

"(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or *part ownership does not of itself establish a partnership*, whether such co-owners do or do not share any profits made by the use of the property;

"(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;

"(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment;

- (a) As a debt by installments or otherwise,
- (b) As wages of an employee or rent to a landlord,
- (c) As an annuity to a widow or representative of a deceased partner,
- (d) As interest on a loan, though the amount of payment vary with the profits of the business,
- (e) As the consideration for the sale of the goodwill of a business or other property by installments or otherwise."

(emphasis added)

Similarly under Section 1 of the uniform limited partnership act, *supra*, a limited partnership is defined to be:

"A limited partnership is a partnership formed by two [2] or more persons under the provisions of section two [2], having as members one [1] or more general partners and one [1] or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership."

Under Section 10 of the uniform limited partnership act, a limited partner has the following rights:

"(1) A limited partner shall have the same rights as a general partner to

- (a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,
- (b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and
- (c) Have dissolution and winding up by decree of court.

"(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections fifteen [15] and sixteen [16]."

It is further to be noted that Section 6, Paragraph 2, of the uniform partnership act, *supra*, provides that the partnership "shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent" therewith.

In the recent case of *Barnes v. Barnes* (1959), 355 Mich. 458, the Michigan Supreme Court discussed the difficulty encountered in determining whether a partnership existed as follows (p. 461):

"Much learning, both ancient and modern, has gone into the determination of whether those who have pooled their properties and talents in a common endeavor, have thereby constituted themselves 'partners.' Various tests have had their days of primacy, only to be eroded by the scouring action of various unforeseen fact situations. Thus Lord Chief Justice DeGrey's famous dictum in *Grace v. Smith*, 2 W B.I. 998 (96 Eng. Rep. 587), stressing a sharing of profits as conclusive of the relationship lost its eminence upon consideration of the situation in which profits were shared merely by way of compensation. Other tests have suffered similar compromise. At the present time no test is conclusive, though in modern law the fact of the intent of the parties, gauged by the legal effect of their agreement, bulks large. *Beecher v. Bush*, 45 Mich. 188 (40 Am. Rep. 465). See section 7, uniform partnership act, C.L. 1948, § 449.7 (Stat. Ann. § 20.7).

Thus my answer must be that if a true partnership relationship is established, whether an ordinary partnership or a limited partnership, all partners would have to be licensed as an architect, engineer or land surveyor in order for the partnership to engage in said professional activity.

In summation, an unlicensed individual may be a shareholder in a corporation offering architectural, engineering or land surveying services provided that said corporation is not incorporated under the professional service corporation act. All partners in partnerships offering such services must be licensed to practice the profession which is the subject of the partnership.

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