



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**W. FORD C. MARTIN
ATTORNEY GENERAL**

January 8, 1970

Honorable Martin Dies, Jr.
Secretary of State
State Capitol Building
Austin, Texas 78711

Opinion No. M-551

Re: Construction of Senate Bill
589, Acts of the 61st Legis-
lature, Regular Session,
1969, Ch. 779, p. 2304 (The
Texas Professional Corporation
Act).

Dear Mr. Dies:

Your request for an opinion on the above subject matter poses the following questions:

"1. When the Professional Corporation Act becomes effective on January 1, 1970, will the Professional Association Act be applicable only to physicians, surgeons, and other doctors of medicine, since the definition of 'professional service' in Section 3 of the Professional Association Act limits the provisions of that Act only to professional services which 'by law cannot be performed by a corporation'?

"2. Other than those professions licensed by the Texas State Board of Medical Examiners, what professions, if any, are included within the phrase 'physicians, surgeons, and other doctors of medicine' as used in Section 3 of the Texas Professional Corporation Act?

"3. Does the amendment (Chapter 802, Acts of the 61st Legislature, Regular Session) to Article 249a, Vernon's Annotated Civil Statutes (architecture statute) have the effect of excluding architects from the provisions of the Texas Professional Corporation Act?

"4. Must the name of a Professional Corporation include words of incorporation in compliance with Article 2.05A(1) of the Texas Business Corporation Act?

"5. Must a Professional Corporation designate and maintain a registered office and agent within the State of Texas in compliance with Articles 3.02A(10) and 2.09 of the Texas Business Corporation Act?"

At the outset we note that the Professional Corporation Act (S.B. 589), the Professional Association Act (S.B. 745), and the amendment to the architecture statute (H.B. 516), were all passed at the Regular Session of the Sixty-first Legislature, 1969. These three acts are in pari materia with the Texas Business Corporation Act, and all four acts must be construed in that context.

QUESTIONS 1 & 2

The 61st Legislature in its Regular Session, passed "The Texas Professional Corporation Act", Senate Bill 589, Chapter 779, page 2304, which becomes effective January 1, 1970.

Section 3 of the above act sets forth a definition of "Professional Service" and also defines a "Professional Corporation". This section reads as follows:

"Sec. 3, as used in this Act, unless the context otherwise requires, the term:

"(a) 'Professional Service' means any type of personal service which requires as a condition precedent to the rendering of such service, the obtaining of a license, permit, certificate of registration or other legal authorization, and which prior to the passage of this Act and by reason of law, could not be performed by a corporation, including by way of example, and not in limitation of the generality of the foregoing provisions of this definition, the personal services rendered by architects, attorneys-at-law, certified public accountants, dentists, public accountants and veterinarians; provided, however, that physicians, surgeons and other doctors of medicine are specifically excluded from the operations of this Act, since there are established precedents allowing them to associate for the practice of medicine in joint stock companies.

"(b) 'Professional Corporation' means a corporation organized under this Act for the sole

and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise duly authorized within this state to render the same professional service as the corporation." (Emphasis added.)

In construing the above quoted statutory provisions this office concluded in Attorney General's Opinion M-539 (1969) that the provisions of Senate Bill 589 do not apply to corporations which perform professional services which could be legally performed by a corporation prior to the passage of the act. Attorney General's Opinion M-539 concluded that since a corporation could be legally organized under the Texas Business Corporation Act for the purpose of performing engineering services, the provisions of the Texas Professional Corporation Act do not apply to professional engineering services or to corporations which perform such services.

Section 6 states that the purpose of the Texas Professional Corporation Act was to authorize corporations to be organized for the purpose of rendering one specific type of professional service and services ancillary thereto.

In view of Section 3 of Senate Bill 589, the bill does not apply to any professional service which could have been performed by a corporation prior to the passage of this act. In addition the bill does not apply to physicians, surgeons and other doctors of medicine licensed by the Texas State Board of Medical Examiners, since these individuals are specifically exempted. Corporations are not legally authorized to practice medicine in view of the provisions of Article 4505, Vernon's Civil Statutes. Rockett v. Texas State Board of Medical Examiners, 287 S.W.2d 190 (Tex.Civ.App. 1956, error ref. n.r.e.).

Senate Bill 745, Acts of the 61st Legislature, Regular Session, 1969, Ch. 840, p. 2513, authorizes the formation of a professional association. Section 2 of Senate Bill 745 provides:

"(A) Formation. Any one or more persons duly licensed to practice a profession under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and

dividing the gains therefrom as stated in articles of association or bylaws.

"(B) Activities. No professional association organized pursuant to this Act shall engage in more than one type of professional service.

"(C) Licenses. All members of the association shall be licensed to perform the type of professional service for which the association is formed."

In view of the provisions of Section 2 of Senate Bill 745, a professional association is not a corporation and the act applies to any person licensed to practice a profession under the laws of this State. Professional service as used in the provisions of Senate Bill 745 (Professional Association Act) is defined in Section 3 of Senate Bill 745 as follows:

"As used in this Act, the term 'professional service' means 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, and which service by law cannot be performed by a corporation. The term 'license' includes a license, certificate of registration or any other evidence of the satisfaction of state requirements."

After the effective date, the Texas Professional Corporation Act (Senate Bill 589), the only professional service which is not permitted to be performed by a corporation is the professional service rendered by individuals licensed by the Texas State Board of Medical Examiners. In view of the provisions of Section 3 of Senate Bill 745 (Professional Association Act), it is our opinion that after January 1, 1970, the effective date of the Professional Corporation Act, the Professional Association Act applies only to individuals licensed by the Texas State Board of Medical Examiners. Our conclusion follows the fact that after January 1, 1970, any profession except the practice of medicine, can be incorporated and the services can by law be performed by a corporation.

QUESTION 3

House Bill 516, Acts of the 61st Legislature, Regular

Session, 1969, Ch. 802, p. 2377, relating to architects, specifically authorizes the profession of architecture to be performed by a corporation. Said act became effective June 14, 1969. Therefore the question presented is whether the phrase "prior to the passage of this Act", contained in Section 3 of the Professional Corporation Act, has the effect of excluding architects from its provisions since architectural services after June 14, 1969, could be performed by a corporation pursuant to the provisions of House Bill 516.

The phrase "date of passage" has been construed by the judiciary of this State to mean the date the act becomes operative as a law. Scales v. Marshall, 96 Tex. 140, 70 S.W. 945 (1902); Glaveston, H. & S.A. Ry. Co. v. State, 81 Tex. 572, 17 S.W. 67 (1891); Calvert v. General Asphalt Co., 409 S.W.2d 935 (Tex.Civ. App. 1966).

The effective date of the Professional Corporation Act (Senate Bill 589) is January 1, 1970, and its provisions do not apply to corporations which perform professional services which could legally be performed by a corporation prior to the passage of the act (January 1, 1970). Attorney General's Opinion M-539 (1969).

Therefore in answer to your third question our answer is "yes". You are advised that the provisions of the Professional Corporation Act do not apply to architects or to corporations performing architectural services. However after June 14, 1969, architects could incorporate under the Texas Business Corporation Act, and they may continue to be so incorporated.

QUESTIONS 4 & 5

Subdivision (A) of Article 2.05 of the Business Corporation Act requires that the corporate name shall contain the word corporation, company or incorporated, or shall contain an abbreviation of such words and shall contain additional words as may be required by law. Section 5 of Senate Bill 589 (Professional Corporation Act) provides that the Texas Business Corporation Act shall be applicable to professional corporations except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of the Professional Corporation Act.

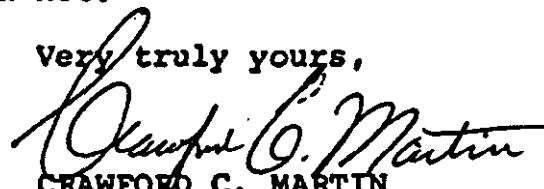
Hon. Martin Dies, Jr., page 6 (M-551)

In answer to Question 5 you are likewise advised that the provisions of Subdivision 10 of Article 3.02A and the provisions of Article 2.09 of the Texas Business Corporation Act are applicable to corporations formed under the Professional Corporation Act.

S U M M A R Y

The Professional Corporation Act (Senate Bill 589, Acts of the 61st Legislature, Regular Session, 1969, Ch. 779, p. 2304) applies to all professions which could not incorporate prior to the effective date of the act (January 1, 1970). After January 1, 1970, the provisions of the Professional Association Act (Senate Bill 745, Acts of the 61st Legislature, Regular Session, 1969, Ch. 840, p. 2513) are applicable only to individuals licensed to practice medicine by the Texas State Board of Medical Examiners. The effect of the 1969 amendment to the architecture statute (Chapter 802, Acts of the 61st Legislature, amending Article 259a, Vernon's Civil Statutes) was to exclude architects from the provisions of the Texas Professional Corporation Act, but architects may incorporate under the Texas Business Corporation Act. The provisions of Article 2.05A(1), 2.09 and 3.02A(10) of the Texas Business Corporation Act are applicable to all corporations formed under the Professional Corporation Act.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by John Reeves
Assistant Attorney General

Hon. Martin Dies, Jr., page 7 (M-551)

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
Alfred Walker, Co-Chairman
Sam Jones
Bill Allen
Richard Chote
Wardlow Lane

MEADE F. GRIFFIN
Staff Legal Assistant

NOLA WHITE
First Assistant