



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

December 17, 1979

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79-302

The Honorable Jack H. Brier  
Secretary of State  
State Capitol, 2nd Floor  
Topeka, Kansas 66612

Re: Corporations--Professional Corporations--Shares,  
Who May Hold

Synopsis: Pursuant to the Professional Corporation Law of Kansas, K.S.A. 17-2706 *et seq.*, shares of stock of a professional corporation may be owned by an "employee stock option trust," provided the trustee of such trust and all participants therein are "qualified persons," as that term is defined in K.S.A. 1978 Supp. 17-2707(d).

\*

\*

\*

Dear Mr. Brier:

You request our opinion as to whether K.S.A. 1978 Supp. 17-2710(a)(3) allows an employee stock option trust (ESOT) to be the owner of stock in a professional corporation, and, if the same is permissible, whether the trustee of such a trust must be a "qualified person," as that term is defined in K.S.A. 1978 Supp. 17-2707(d).

The professional corporation acts of nearly all states require that only "licensed professionals" may own stock in professional corporations. The purpose of such provisions is to ensure that persons making decisions regarding the rendering of professional services are licensed members of the profession.

The Honorable Jack H. Brier  
Page Two  
December 17, 1979

This principle is embodied throughout the Professional Corporation Law of Kansas, K.S.A. 17-2706 et seq. K.S.A. 1978 Supp. 17-2709 requires, prior to issuance of the certificate of incorporation, certification by the professional regulating board that each of the incorporators of a professional corporation is duly licensed to practice the profession. Subsection (a) of K.S.A. 17-2712 provides as follows:

"(a) A professional corporation may issue the shares of its capital stock only to a qualified person. A shareholder may voluntarily transfer his shares in a professional corporation to the corporation or to a qualified person with the prior written consent of the corporation unless the articles of incorporation otherwise provide. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the person to whom the transfer is to be made or the shares issued is duly licensed to render the same type of professional services as that for which the corporation was organized. No shareholder shall enter into any voting trust agreement, proxy, or any other type of agreement vesting another person, other than another shareholder of the same corporation, with authority to exercise the voting power of any or all of his stock. The issuance or transfer of any shares and any proxy, voting trust or other agreement made in violation of this section shall be null and void. Every certificate of stock issued by a professional corporation shall contain substantially the following provision: 'The ownership and transfer of this stock and the rights and obligations of stockholders are subject to the limitations and provisions of the professional corporation law of Kansas.'" (Emphasis added.)

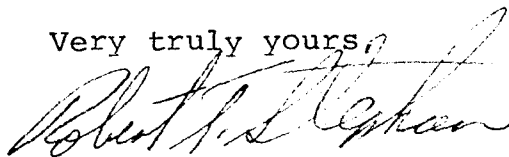
The term "qualified person," as used in the act, is defined, in K.S.A. 1978 Supp. 17-2707(d), to mean "any natural person licensed to practice the same type of profession which any professional corporation is authorized to practice."

The Honorable Jack H. Brier  
Page Three  
December 17, 1979

The requirement that shareholders be "licensed professionals" is further adhered to in K.S.A. 1978 Supp. 17-2714 and K.S.A. 17-2719. The former prescribes a method of determining the price at which the corporation may purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in the corporation, and the latter provides for automatic forfeiture of the certificate of incorporation, if the certificate filed pursuant to K.S.A. 1978 Supp. 17-2718(a)-(2) shows "that any shares of the corporation have been owned by an unqualified person for more than one year preceding the date of the certificate and that no action as required herein has been timely instituted to fix the fair value of such shares."

Subsection (a)(3) of K.S.A. 1978 Supp. 17-2710, which states, in part, that a professional corporation shall be deemed to have, as one of its purposes, the establishment of "stock option plans . . . for any or all of its directors, officers and employees," must be construed, in our judgment, to be limited in accordance with the above-cited statutory provisions. This means that stock options may only be granted to employees who are "qualified persons," i.e., persons licensed to practice the same type of profession as the professional corporation is authorized to practice. Any stock option or stock ownership plan which would grant stock ownership rights to a "non-qualified" person would clearly conflict with the provisions of K.S.A. 17-2712(a) and the other statutes quoted above. With regard to an ESOT, however, the Professional Corporation Law of Kansas does not prohibit stock ownership by such a trust, so long as the trustee thereof and all participants therein are "qualified persons," as that term is defined in K.S.A. 1978 Supp. 17-2707(d). In passing, we note that the "Michigan Professional Service Corporation Act" has been interpreted in precisely this manner by the Attorney General of that state. See Michigan Attorney General Opinions 1977-1978, No. 5825.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm