



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 23

Adley E. Johnson, C.P.A.  
Chairman, Kansas Board of Accountancy  
Landon State Office Building, Suite 556  
Topeka, Kansas 66612-1239

Re: Corporations--Limited Liability Companies--  
Formation; Certified Public Accountants

Corporations--Professional Corporations--  
Professional Corporation Law; General and Business  
Corporation Law Applicable; Exceptions

Accountants, Certified Public--Licensure,  
Examination and Registration--Registration of  
Partnerships; Professional Corporations

Synopsis: A certified public accountant may organize and  
practice as a limited liability company pursuant to  
K.S.A. 1991 Supp. 17-2708. Cited herein: K.S.A.  
17-2709; 17-2717; 17-6001 et seq.; 17-7601  
et seq.; K.S.A. 1991 Supp. 17-2707;  
17-2708; 17-2712.

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Dear Mr. Johnson:

As chairman of the Kansas board of accountancy you inquire  
whether a Kansas certified public accountant (hereinafter  
C.P.A.) may organize and practice as a limited liability  
company pursuant to K.S.A. 1991 Supp. 17-2708.

You indicate the C.P.A. licensing statutes specifically allow C.P.A.'s to practice as professional corporations provided they meet certain specific requirements such as licensing and organization under the professional corporation law.

The professional corporation law, K.S.A. 17-2706 et seq., authorizes persons licensed in certain professions to form corporations for the practice of their profession. Among the professionals listed are certified public accountants, K.S.A. 1991 Supp. 17-2707. At issue is whether K.S.A. 1991 Supp. 17-2708 authorizes C.P.A.'s to organize and practice as a limited liability company. The statute provides:

"Except as otherwise provided, the Kansas general corporation code contained in K.S.A. 17-6001 et seq., and amendments thereto, shall apply to a professional corporation organized pursuant to this chapter. Any provisions of the professional corporation law of Kansas shall take precedence over any provision of the Kansas general corporation code which conflicts with it. The provisions of the professional corporation law of Kansas shall take precedence over any law which prohibits a corporation from rendering any type of professional service. Any person or organization as defined in K.S.A. 17-2707, and amendments thereto, which is authorized to form a professional corporation also may incorporate under the Kansas general corporation code contained in K.S.A. 17-6001 et seq., and amendments thereto, or organize under the Kansas limited liability company act contained in K.S.A. 17-7601 et seq., and amendments thereto."

Accordingly the general corporation code applies to professional corporations, except to the extent that a conflict exists. When there is a conflict, the professional corporation law takes precedence. In other words a professional corporation must meet all the requirements of the general corporation code and must also abide by restrictions to its corporate form imposed by the professional corporation law, K.S.A. 17-2709. Additionally the 1989 and 1991

amendments to the above statute permit any person authorized to form a professional corporation to incorporate as a general corporation or to organize under the Kansas limited liability company act.

The interpretation of a statute is a question of law and it is the court's function to interpret the statute to give it the intended effect. Unified School District No. 279 v. Sec'y of the Kansas Department of Human Resources, 247 Kan. 519, 524 (1990). The fundamental rule of statutory construction is that the purpose and intent of the legislature govern when that intent can be ascertained from the statute. Id. at 527. While hardly a model of clarity, we think the statute's intended effect is discernible. It is our opinion that the statute authorizes professional corporations, such as C.P.A.'s to incorporate under the Kansas general corporation code or organize as a limited liability company, provided they remain subject to the restrictions imposed by the professional corporation law.

The leading and most current case interpreting this statute is consistent with our opinion. In Early Detection Center, Inc. v. Wilson, 248 Kan. 869 (1991) the Supreme Court addressed the question of whether a general corporation may practice the healing arts. The case involved an appeal by Early Detection Center (hereinafter EDC) from the trial court's grant of summary judgment to Dr. Marvin H. Wilson. EDC filed the action against Dr. Wilson, an incorporator, officer, director, 30% shareholder and employee of EDC, alleging that he breached his fiduciary duty to the corporation by forming a competing business. The Supreme Court concluded that K.S.A. 1989 Supp. 17-2708 does not authorize the practice of medicine by a general corporation or allow a general corporation to provide professional services under the supervision of a licensed practitioner. Because this conclusion is so broadly stated and appears inconsistent with our opinion it is necessary to consider the court's reasoning.

In this case Dr. Wilson and Dr. Powell, both licensed to practice medicine, formed a partnership that they later incorporated as a professional corporation known as EDC. In 1985 they amended the articles of incorporation to function as a general corporation pursuant to K.S.A. 17-2717. This statute specifically allows the change to a general corporation but makes clear that the corporation no longer functions as a professional corporation and is now subject only to the general corporation code. EDC argued that if

the professional corporation law allowed this change from a professional corporation to a general corporation, the general corporation was not precluded from providing medical services if it employed individuals licensed to provide the services. 248 Kan. 873. The court disagreed because as a professional corporation both the the incorporators and the professional corporation are licensed to practice the healing arts. As a professional corporation, EDC's transfer of stock was limited by the act to licensed individuals, K.S.A. 17-2712. EDC's change from a professional corporation to a general corporation and amendment of its corporate charter made it subject only to the general corporation code that allowed it to transfer stock to unqualified (unlicensed) individuals. EDC sold stock to two unlicensed individuals, W. Hicks and Harvey Doud.

Had the 1989 amendments to K.S.A. 17-2708 existed (the facts in Early Detection Center, Inc. v. Wilson arose in 1985) EDC as a professional corporation could have incorporated as a general corporation. The 1989 amendments state:

"Any person or organization as defined in K.S.A. 17-2707, and amendments thereto, which is authorized to form a professional corporation also may incorporate under the Kansas general corporation code contained in K.S.A. 17-6001 et seq."

However as a general corporation organized pursuant to this statute EDC would have been subject to the professional corporation law, (specifically K.S.A. 17-2712 restricting the transfer of shares to licensed individuals). See Central State Bank v. Albright, 12 Kan.App.2d 175, 180 (1987) (the issuance or voluntary transfer of shares to an unqualified person results in forfeiture of the corporate charter.) K.S.A. 17-2712 would have applied to EDC because of incorporation pursuant to K.S.A. 17-2708 that says the professional corporation law takes precedence in the event of a conflict. There is a conflict when the general corporation code freely allows stock transfer and the professional corporation law restricts transfers to licensed individuals in the same profession.

Therefore in our opinion the conclusion in Early Detection Center, Inc. v. Wilson must be tempered by the court's analysis and narrowed to the facts before the court. The conclusion in this case thus applies only to a general corporation that is subject only to the general corporation

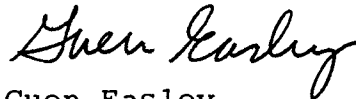
code and no longer abides by the restrictions imposed by the professional corporation law because it incorporated under K.S.A. 17-2717. Narrowed to the facts it is evident why the court concluded that K.S.A. 1989 Supp. 17-2708 does not authorize the practice of medicine (or any other profession listed in 17-2707) by a general corporation.

In conclusion it is our opinion that K.S.A. 1991 Supp. 17-2708 authorizes C.P.A.'s to organize and practice as a limited liability company provided the professionals abide by the restrictions applicable to a professional corporation. See subsection (q) in K.S.A. 1991 Supp. 17-7604 that authorizes a limited liability company to exercise all the powers of a Kansas professional corporation.

Very truly yours,



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Attorney General of Kansas



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Assistant Attorney General

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