

Opinion No. 66-97

August 4, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Mr. E. C. Serna, District Attorney, Sixth Judicial District, County Courthouse, Silver City, New Mexico

QUESTION

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Can a professional corporation organized under Sections 51-22-1 through 51-22-13, N.M.S.A., 1953 Compilation (P.S.), enacted by the laws of 1963, be incorporated as a no stockholders' liability corporation?

CONCLUSION

No.

OPINION

{*131} ANALYSIS

If a professional corporation has any authority to be authorized as a no stockholders' liability corporation this authority must be found under Section 51-3-9, N.M.S.A., 1953 Compilation, for there is no specific authority for the incorporation of a no stockholders' liability corporation {*132} under the terms of the Professional Corporation Act supra. Section 51-3-9 supra, provides the following:

"Waiver of Stockholders' liability -- Separate class of corporations -- Endorsement of instruments. -- No stockholders' liability for unpaid stock shall attach to any stock issued by any corporation **under the terms of this article** : Provided, that at the time of filing the certificate a separate certificate shall be signed and executed in the same manner that the certificate of incorporation is filed, declaring that there shall be no stockholders' liability on account of any stock issued, and shall be filed in the office of the state corporation commission together with the certificate of incorporation, and likewise certified and recorded in the office of the county clerk, and the certificate of incorporation, together with said declaration of nonliability of stockholders shall be published as hereinafter provided. This section shall not apply to any of the provisions for the issuance of stock and fixing liability and the means of enforcing liability upon the same contained in any other section of this article but shall be construed as a separate and distinct class of corporations, but each corporation taking advantage of the provisions of this section must add to its corporate name in the certificate, report, or

record, required by law, and in every contract, or other corporate instrument, the words 'No Stockholders' Liability'." (Emphasis supplied.)

We are of the opinion that 51-3-9 supra, is not applicable to the Professional Corporation Act because said section by its own terms applies only to "the terms of this article". In reviewing the history of Section 51-3-9 supra, we find that the words "this article" were substituted for the words "this act" by the 1915 code compilers and refer to Article I of Chapter 23 of the 1915 code, compiled as Sections 24-1-20, 24-1-21, 51-2-1 to 51-2-16, 51-2-18 to 51-2-21, 51-2-24 to 51-2-28, 51-2-34, 51-2-35, 51-2-37 to 51-3-4, 51-3-8 to 51-3-20, 51-6-1, 51-6-2, 51-6-4 to 51-6-11, 51-6-13, 51-7-1 to 51-10-10, 51-11-1 to 51-11-7, 51-12-1 to 51-12-8, N.M.S.A., 1953 Compilation.

Therefore 51-3-9 supra, does not apply to the Professional Corporation Act which was enacted by the 1963 legislature. We conclude that there is no provision by which a professional corporation may become a no stockholders' liability corporation.