

Opinion No. 69-63

June 17, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson III,
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TO: Orvil T. Rozzell, D.D.S., Secretary, New Mexico Board of Dental Examiners, P.O.
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QUESTIONS

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May persons licensed to practice dentistry in the State of New Mexico form a corporation for that purpose so long as all of the names of the dentists in the corporation appear in the name of the corporation?

CONCLUSION

Yes.

OPINION

{*94} ANALYSIS

The question posed requires the construction of two New Mexico Statutes. One is the Dental Practice Act which is found in Sections 67-4-1 to -34, N.M.S.A., 1953 Compilation, and the Professional Corporation Act which is found in Sections 51-22-1 to -13, N.M.S.A., 1953 Compilation as amended by Laws 1969, Chapter 245.

More particularly, the following sections apply directly to this question:

"67-4-15. Practice under other than own name unlawful. -- It shall be unlawful for any person or persons to practice dentistry or dental surgery under the name of any company, association, or corporation, and any person or persons practicing or offering to practice dentistry or dental surgery, shall practice under his or her own respective name or names only.

51-22-4. INCORPORATION. -- One or more individuals, each of whom is licensed to render a professional service, may incorporate a professional corporation for pecuniary profit and become shareholders therein in the manner provided in the Business Corporation Act. The Business Corporation Act applies to professional corporations. If the provisions of the Business Corporation Act conflict with the provisions of the Professional Corporation Act, the provisions of the Professional Corporation Act shall prevail.

51-22-3. Definitions. -- As used in this act [51-22-1 to 51-22-13]: A. '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 or other legal authorization and which, prior to the passage of the Professional Corporation Act and by reason of law, could not be performed by a corporation. The term includes, but is not necessarily limited to, the personal services rendered by certified public accountants, registered public accountants, chiropractors, optometrists, dentists, osteopaths, podiatrists, architects, veterinarians, doctors of medicine, doctors of dentistry, physicians and surgeons, attorneys at law and life insurance agents.

51-22-6. CORPORATE NAME. -- The corporate name of a professional corporation shall contain the words 'limited', 'chartered', 'professional association' or 'professional corporation' or shall contain an abbreviation of those words."

Prior to the enactment of the {⁹⁵} Professional Corporation Act this office ruled that a group of dentists who had formed a corporation under the name Sandia Dental Group could not practice dentistry under that name. Opinion of the Attorney General No. 60-88, dated May 17, 1960. That portion of the aforementioned opinion discussing whether or not dentists could form a professional corporation is overruled by the passage of the Professional Corporation Act. But the opinion also discusses the requirement of section 67-4-15, quoted above, and held that the dentists under those facts could not practice dentistry under a name of a corporation which did not contain the names of all the members.

We find no difficulty in stating that the Dental Practice Act and the Professional Corporation Act are compatible in this regard. It seems clear that the dentists may form a professional corporation for the practice of dentistry so long as the name of the corporation contains all of the names of the members of the Professional Corporation plus the words "professional corporation" or some other word or abbreviation of a word authorized by Section 51-22-6, quoted above.