

Note from the Attorney General's Office:

1978 Op. Att'y Gen. No. 78-066 was modified by
1985 Op. Att'y Gen. No. 85-065.

OPINION NO. 78-066**Syllabus:**

Legal title to stock of a professional association may be held by a trustee of a qualified pension or profit sharing plan, licensed to render the same professional service as that for which such association was organized, as long as equitable title to the stock is also held by such professionals.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 20, 1978

I have before me your request for my opinion which reads, in pertinent part, as follows:

We request your opinion as to whether, under Ohio professional association law, legal title to stock of a professional association can be held by a trustee of a qualified pension or profit sharing plan for the benefit of a licensed professional.

Prior to the enactment of R.C. Chapter 1785 by the General Assembly in 1961, Ohio courts uniformly held that incorporation by professionals for the purpose of carrying on a practice was forbidden under Ohio law. See, e.g., State v. Myers, 128 Ohio St. 366 (1934); Title Abstract & Trust Co. v. Dwonker, 129 Ohio St. 23 (1934); State, ex rel. Green v. Brown, 173 Ohio St. 114 (1962); 1952 Op. Att'y Gen. No. 1751; 1961 Op. Att'y Gen. No. 2495. While R.C. Chapter 1785 has, in large part, removed this impediment, it has also placed certain conditions and restrictions upon professional corporations. R.C. 1785.02 and 1785.05 permit only licensed professionals to be stockholders in professional corporations. Specifically, R.C. 1785.05 provides as follows:

A professional association may issue its stock only to persons who are duly licensed or otherwise legally authorized to render the same professional service as that for which the association was organized. (emphasis added)

R.C. 1785.07 imposes a similar restriction upon the sale or transfer of stock in a professional corporation.

Your inquiry concerns whether, in light of such restrictions, a professional association incorporated under Ohio law may transfer its shares to the trustee of a pension or profit sharing plan and trust qualified under §§401 and 501(a) of the Internal Revenue Code of 1954. Presumably, stock of the professional association would be issued to the plan trustee to fund the benefits accruing to an individual under the plan. In order to determine whether such issuance or transfers comport with R.C. 1785.02, 1785.05 and R.C. 1785.07, it is necessary to analyze the nature of ownership of trust property. Ownership of property held in trust is not lodged within the trust. Rather, the legal title to the trust res is vested in the trustee. 1

Bogert, Trusts and Trustees, §1 (2d ed., 1965). Equitable title is vested in the beneficiary. Robbins v. Smith, 72 Ohio St. 1 (1905); Bogert, supra, §1. Therefore, the ownership of property held in trust is split between the legal title of the trustee and the equitable title of the beneficiary. Accordingly, stock in a professional association may be transferred in trust where both the trustee and the beneficiary are "persons duly licensed or otherwise legally authorized to render the same professional service for which the association was organized." This result has been suggested by one commentator. See, Smith, Professional Corporations in Ohio: The Time for Statutory Revision, 30 Ohio St.L.J. 439, 456 (1969). Moreover, Attorneys General in Georgia and Michigan have reached the same conclusion after analyzing professional corporation statutes similar to R.C. Chapter 1785. See, 1975 Op. Att'y Gen. of Georgia No. 75-61; 1978 Op. Att'y Gen. of Michigan No. 5285. Where the trustee is not such a licensed professional, stock of a professional corporation may not be transferred to him. Such a transfer vests the legal title to the stock of a professional association in a person not licensed to perform the professional service for which the association was organized, in contravention of R.C. 1785.02, 1785.05 and 1785.07. Therefore, I conclude that legal title to stock of a professional association may be held by a trustee of a qualified pension or profit sharing plan, licensed to render the same professional service as that for which such association was organized, as long as equitable title to the stock is also held by such licensed professionals.

Therefore, it is my opinion, and you are so advised, that the legal title to stock of a professional association may be held by a trustee of a qualified pension and profit sharing plan, licensed to render the same professional service as that for which such association was organized, as long as equitable title to the stock is also held by such professionals.