

1502

WHETHER A PROFESSIONAL ENGINEER MAY PRACTICE
THE OCCUPATION OF ENGINEERING THROUGH A LIMITED
PARTNERSHIP ASSOCIATION—CHAPTER 1783., R.C. §4733.16,
R.C.

SYLLABUS:

A limited partnership association organized under Chapter 1783., Revised Code, is an association within the purview of Section 4733.16, Revised Code, and a professional engineer may practice the occupation of engineering through such a limited partnership association.

Columbus, Ohio, June 24, 1960

Hon. Walter W. Graf, Professional Engineers and Surveyors
21 West Broad Street, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Section 4733.16, Revised Code, provides:

“A firm, copartnership, or an association may engage in the practice of professional engineering or surveying in this state, provided only such practice is carried on by professional engineers or surveyors, respectively, who are registered in this state.

“No corporation shall be granted a charter to engage in the practice of professional engineering or surveying, nor shall any corporation formed after August 6, 1943, use or assume a name involving the word “engineer” or “engineering” or any modification or derivative of such term except a nonprofit membership corporation.’

“The Board has in recent months been informed that there are several engineering concerns in Ohio who have formed Limited Partnership Associations under Chapter 1783., Revised Code, and we have also received numerous letters from professional engineers asking whether they may practice engineering as a limited partnership association formed under Chapter 1783., Revised Code.

“Section 1783.01, Revised Code, provides:

“When any number of persons, not less than three nor more than twenty-five, desire to form a limited partnership association for purpose of conducting any business or occupation within the United States or elsewhere, except for dealing in real estate or for banking, * * *

“We respectfully request your opinion as to whether a professional engineer may form a limited partnership association under Section 1783.01, Revised Code, which provides that a limited partnership association may be formed for the purpose of conducting *any business or occupation* and whether there is any provision of law which would prevent a professional engineer from practicing engineering through a limited partnership association.”

The common law recognized three separate occupations as professions; law, medicine and the ministry. 12 Ohio Jurisprudence (2d), 439, Corporations, Section 345. A former attorney general, in Opinions of the Attorney General for 1910, page 213, ruled that the corporation law in effect at the time did not preclude the formation of a corporation to practice engineering since engineering was not a profession under the common law. Later, however, the legislature recognized engineering as a profession and enacted legislation to control and regulate such endeavor for the protection of the public. 115 Ohio Laws, 355. The Court of Appeals upheld the validity of this regulation in *Society of Engineers v. Hulslander*, 83 Ohio App., 497, basing its decision on the police power of the state to protect the general health, welfare and safety of the public.

Therefore, it is apparent that the right to engage in the practice of engineering as well as the form of business organization utilized in the practice is controlled by Chapter 4733., Revised Code. It is further apparent from a consideration of Chapter 1783., Revised Code, that a limited partnership association is a creature of statute and that the purposes for which it may be used are controlled by statute.

Section 1783.01, Revised Code, provides in part:

“When any number of persons, not less than three nor more than twenty-five, desire to form a limited partnership association for the purpose of conducting any business or occupation within the United States or elsewhere, except for dealing in real estate or for banking, * * *

“* * *”

A consideration of Chapter 1783., Revised Code, indicates that a limited partnership association is a rather unique form of business organi-

zation. The statute provides that not less than three nor more than twenty-five persons may form a limited partnership association for conducting any business or occupation, except real estate or banking; that the life of such organization may not exceed twenty years; that the management of such organization shall be vested in a group of managers of not less than three nor more than five individuals; that the interest of the limited partners may be transferred but the new owners may not participate in the association without the consent of the majority; the association may sue and be sued by the associate name; and that the members shall not be liable for more than their contribution, except in certain specified instances. A summary consideration of the characteristics of the limited partnership association makes it apparent that this form of business organization is more closely related in its nature to a corporation than a partnership. The courts throughout the United States, however, have consistently ruled that, although similar in nature, the limited partnership association is not a corporation. *Great Southern Fire Proof Hotel v. Benjamin F. Jones*, 20 S. Ct. 690, 44 L. ed., 842, *Carle v. Carle Toole & Engineering Co.*, 114 Atl. 2d, 738, *Hilbs v. Brown*, 190 N.Y., 167, 82 N.E. 1108, 68 Corpus Juris Secundum, 449. This form of business organization is recognized by statute in Pennsylvania, Michigan and New Jersey but the use of such form of organization is limited because of the lack of judicial decisions construing the law and the lack of general knowledge among the members of the bar. 10 Rutger's Law Review, 701. The limited partnership association is not a corporation but certainly many of the objections which have been applied to the practice of a profession through a corporate entity apply to this form of organization. There is no question that it is an entity of sorts but for that matter so is the unincorporated association. Chapter 1745., Revised Code. *Roof v. Sommers*, 75 Ohio App., 511. There is no question that the association cannot be licensed; there is a shield from personal liability; and all of the other attendant objections of corporate practice. This, of course, is not determinative of the issues.

Occupation is defined in Webster's New International Dictionary, 2nd Edition as follows:

"That which occupies, or engages, the time and attention; the principal business of one's life; vocation; business."

The above definition, without doubt, encompasses the practice of a profession and it is quite apparent that the only barrier to the formation of

a limited partnership association for the purposes of the practice of engineering must be found in Chapter 4733., Revised Code. Section 4733.16, Revised Code, provides :

“A firm, copartnership, or an association may engage in the practice of professional engineering or surveying in this state, provided only such practice is carried on by professional engineers or surveyors, respectively, who are registered in this state.

“No corporation shall be granted a charter to engage in the practice of professional engineering or surveying, nor shall any corporation formed after August 6, 1943, use or assume a name involving the word ‘engineer’ or ‘engineering’ or any modification or derivation of such term except a nonprofit membership corporation.”

The Court of Appeals for Columbiana County in *McMillen v. Industrial Commission*, 13 Ohio App., 310, defines “firm” as follows at page 312:

“The word ‘firm’ is used in its ordinary sense as designating a partnership, or an association of persons acting together for a particular purpose, and not as a person or corporation. (*People v. Strauss*, 97 Ill. App., 47, 55, and *Boyd v. Thompson & Coxe*, 153 Pa. St., 78, 25 Atl. Rep., 769.) * * *”

The Wisconsin Supreme Court in the case of *Ollie C. Kempf v. Joint School District No. 3*, 6 Wisc. (2d), 95, 94 N.W. 2nd, 172 at page 174 stated:

“(1, 2) Sec. 101.31(7), Stats., prohibits the practice of architecture by a person not registered as an architect. The statute permits a firm, corporation or partnership or joint stock association to practice architecture when a non-registered architect is associated with a registered architect who has responsible direction of the architectural work. In this instance the term ‘firm’ means a business association although it is not otherwise properly described as a partnership, corporation or joint stock association. Here the proffered contract was in the name of Schroeder, architect, and plaintiff Kempf, designer. * * *”

I further note that the Supreme Court of Ohio in *Celina Telephone Co., v. Mutual Telephone Co.*, 102 Ohio St., 487, in discussing the nature of a form of business organization as it pertained to the public utility law, stated at pages 491 and 492:

“It is urged in the amended petition, and admitted in the answer, that the defendant is a partnership association. A partnership association is a creature of statute, being provided for under Part Second, Title VII, Division I, Chapter 1, General Code, and the purpose for which it may be formed, as provided in Section 8059, General Code, is for ‘conducting any lawful business or occupation within the United States.’

“And Section 8070, General Code, provides that ‘The association from time to time may divide profits.’

“The whole tenor of the act seems to provide for the organization and conduct of business for profit. We very much doubt, whatever may be its legal aspect, that the defendant is a partnership association.

“Defendant says (record, page 24) that it has accepted the ordinance, which in Section 1 gave permission to use the streets, alleys and the public ways, to supply the citizens and the public with telephone communication, for the purpose of erecting a mutual telephone plant, and operating it.

“Section 614-2, General Code, which is a part of the public utilities act, provides in part as follows:

“ ‘Any person or persons, firm, or firms, copartnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated: * * * When engaged in the business of transmitting to, from, through, or in this state, telephonic messages, is a telephone company and as such is declared to be a common carrier.’

“Whatever genus of association or sort of grouping of interest this defendant may be, in whatever legal entity it may be classed, the above recitation is broad enough to include it, and when it is concerned in the erection and operation of a telephone plant it seems clear beyond peradventure that it expects to engage in the business of transmitting to, from, through, or in this state, however extended, or however limited, telephonic messages.

“* * *”

It is further noted that the word “association” is broadly defined to include such organizations as business trusts, Massachusetts Trust Companies and other unincorporated groups of individuals who technically cannot be classed as legal entities. Black’s Law Dictionary, page 156.

In view of the foregoing, it appears clear that the words “firm” and “association” as used in Section 4733.16, *supra*, are quite broad and sufficient to encompass a limited partnership association. I conclude, therefore,

that the legislature has not prohibited the practice of engineering through the use of a limited partnership association and feel that such a decision may properly be justified by the very scope and nature of the engineering field. A great number of states have recognized the right to practice engineering as a corporation subject to certain rigid controls. Ohio now stands with the minority in prohibiting such practice. 14 Business Lawyer, 969. The problems created by the legislative recognition of an entity so closely related to a corporation are not insurmountable and may be readily reconciled when one considers that whoever practices engineering must be registered whether working as a sole proprietor, a partner, or a member of a limited partnership association.

Accordingly, it is my opinion and you are advised that a limited partnership association organized under Chapter 1783., Revised Code, is an association within the purview of Section 4733.16, Revised Code, and a professional engineer may practice the occupation of engineering through such a limited partnership association.

Respectfully,

MARK McELROY
Attorney General