

OPINION NO. 77-018**Syllabus:**

Where each shareholder of a foreign professional corporation is licensed to render professional service by the State of Ohio and where the foreign professional corporation otherwise meets the requirements of R.C. Chapter 1785, it may properly be licensed to do business in Ohio.

To: Ted W. Brown, Secretary of State, Columbus, Ohio

By: William J. Brown, Attorney General, April 6, 1977

I have before me your request for my opinion as to whether an out-of-state professional corporation may obtain a license to do business in Ohio under R.C. Chapter 1703. Your presentation of this issue reads as follows:

Section 1701.03 of the Revised Code provides with respect to Ohio domestic corporations that a corporation may not be formed for the purpose of carrying on a profession. Section 1785.02 of the Revised Code provides, however, that a professional association may incorporate provided that each individual involved in the formation of the corporation is licensed or otherwise authorized to render the professional service for which the corporation is formed. Section 1785.05 of the Revised Code further provides that stock may only be owned in such an association by persons who are duly licensed or otherwise legally authorized to render the professional service.

Chapter 1703 of the Revised Code provides general authority for an out-of-state corporation

to apply for a license to do business in Ohio for any purpose for which an Ohio corporation might engage in business in this state, but no section in that chapter specifies whether a corporation formed for the purpose of carrying on a profession in another state is barred by Section 1701.03 of the Revised Code from applying for a license to engage in the profession in this state, or whether Section 1785.02 of the Revised Code permits a foreign professional corporation to apply for a license to do business in this state so long as each shareholder of the corporation is licensed to render the professional service in this state.

I would note at the outset that it was an historic principle in both the common and the statutory law of Ohio that the practice of a profession involves a personal relationship between the professional and his client which cannot be fulfilled by a corporation. Land Title Abstract & Trust Co. v. Dworken, 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. Further, R.C. 1701.03 and its predecessors, the former R.C. 1701.04 and G.C. 8623-3, specifically preclude the formation of a corporation for the purpose of carrying on the practice of a profession.

The principle, however, has been subject to change in recent years, in that the establishment of professional associations has been sanctioned by many legislative bodies. The 104th General Assembly of Ohio in 1961 enacted R.C. Chapter 1785 which permits an individual or group of individuals, each of whom is licensed or otherwise legally authorized to render the same kind of professional service, to organize and incorporate as a professional association. Although the provision of R.C. 1701.03 that a corporation may be formed for any purpose other than for carrying on a profession remains in effect, R.C. 1785.08 specifies that where the provisions of R.C. Chapter 1701 conflict with those of R.C. Chapter 1785, the provisions of R.C. Chapter 1785 take precedence. Thus, the creation and operation of such associations in Ohio is governed by the requirements of R.C. Chapter 1785.

In the years following the enactment of R.C. Chapter 1785, it has been recognized that a professional association organized thereunder should be regarded as a corporation engaged in the practice of a profession. See, State ex rel. Green v. Brown, 173 Ohio St. 114 (1962); Rule XIV, Rules of Practice, Supreme Court of Ohio; Cleveland Clinic v. Sombrio, 6 Ohio Misc. 48, (Akron Municipal Court, 1966); O'Neill v. United States, 14 Ohio Misc. 61, 281 Fed. Supp. 359 (1968).

As you note in your letter, no specific or express statutory provision has been made for the recognition of foreign professional corporations in Ohio. Prior to the enactment of R.C. Chapter 1785, the rule in Ohio was that set out in State, ex rel. Bricker v. Buhl Optical Co., 131 Ohio St. 217 (1936), in which the Court concluded that a foreign corporation lawfully authorized to do an optical business in Ohio was not authorized to engage in the practice of the profession of optometry within the state because a corporation could not at that time engage in the practice of a profession.

Similarly, in 1961 Op. Att'y. Gen. No. 2495, one of my predecessors had occasion to consider whether a foreign corporation, not licensed to practice the profession of engineering in its domiciliary state, could be entitled to so practice in Ohio. After observing that the corporate practice of professional engineering or surveying was barred by the provisions of R.C. 4733.16 then in effect, my predecessor commented as follows:

Research would also persuade me that the status of the law is the same in the domiciliary state of the corporation under discussion. Thus it is difficult in the extreme to see how this corporation could enjoy a privilege in Ohio to which it is not entitled in Illinois, whence it derives.

These authorities suggest then that the question of whether a foreign corporation may engage in a specific activity turns on both the law in this state and the law in the state of incorporation. Since corporate practice of a profession has subsequently been recognized your question involves an analysis of the extent to which the provisions of R.C. Chapter 1785, which permit the organization and incorporation of licensed professionals, alter the conclusion reached in State, ex rel. Bricker v. Buhl Optical Co., supra.

Your question assumes that an out-of-state professional association is duly organized and incorporated in compliance with the law of the domiciliary state. In such a case the primary inquiry must be into the circumstances under which such a foreign corporation may be recognized in Ohio. As discussed in 1961 Op. Att'y. Gen. No. 2495, the public policy of a state with respect to the recognition and admission of foreign corporations may be ascertained by reference to several sources, including the legislation of the state, either prohibiting or enabling acts or general legislation on a given subject, and by reference to settled adjudications of the highest court and by reference to the constant practice of its government officers.

As noted above, no express statutory provision has been made in respect to the recognition of foreign professional corporations. Further, the Supreme Court of Ohio has not spoken to the admission of a foreign corporation to the practice of a profession in Ohio subsequent to the enactment of R.C. Chapter 1785 in 1961. It appears then that the basic rationale applied by the Court in State, ex rel. Bricker v. Buhl Optical Co., supra, remains intact. That is, a foreign corporation may only be licensed to engage in activity which is authorized under Ohio law. For these reasons, reference to the provisions of R.C. Chapter 1785 itself provides the best method of evaluating whether recognition and admission of a foreign corporation is consonant with the public policy of Ohio. It is, therefore, my conclusion that where a foreign professional corporation meets the requirements of R.C. Chapter 1785, it may properly be recognized and admitted to practice in Ohio.

As you note in your letter, R.C. 1785.02 requires that each shareholder of a professional corporation be licensed or otherwise legally authorized by the State of Ohio to render professional services. Further, R.C. 1785.03 defines "employee" quite narrowly in the context of an employee rendering professional services and specifies that a professional association may render professional

services only through officers, employees and agents who are themselves duly licensed or otherwise legally authorized to practice by the State of Ohio. It may be that the General Assembly will in the future choose to recognize foreign professional corporations specifically and to provide, for example, that only those officers, employees, agents and shareholders, who render professional services within Ohio, are subject to the requirement of an Ohio license. At the present time, however, the General Assembly has not so provided, and it is my conclusion that recognition by Ohio may properly be made only where a foreign professional corporation meets the requirements of R.C. Chapter 1785. Nothing in this opinion, of course, prevents an officer, employee or agent of a foreign professional corporation who is also licensed to practice in Ohio from practicing within this state as a licensed individual practitioner.

In specific answer to your question, therefore, it is my opinion and you are so advised that where each shareholder of a foreign professional corporation is licensed to render professional service by the State of Ohio and where the foreign professional corporation otherwise meets the requirements of R.C. Chapter 1785, it may properly be licensed to do business in Ohio.