
1/62 Law corporations and names

Prior to issuance of the American Bar Association Professional Ethics opinion concerning the propriety of attorneys carrying on the practice of law as a corporation for federal tax purposes, this committee had numerous inquiries on the subject. It resolved to withhold official action pending release of Opinion 303. Without attempting to give a formal opinion at this time, the committee would like to convey the thoughts of its members on the matter, following the passage of Chapter 350, Laws of 1961.

It should be made clear that this committee expresses no opinion as to whether any federal tax advantages can be gained by firms of attorneys who adopt the corporate form as prescribed in Chapter 350, and the committee further expresses no opinion as to the advisability of adopting this form.

Members of this committee are in accord with the ABA opinion which states that lawyers rendering legal services to a client must be personally responsible to the client, as required by Canon 35, of the Canons of Professional Ethics adopted by the Supreme Court of Wisconsin for the State Bar of Wisconsin.

The committee members subscribe to the thoughts of the ABA committee opinion concerning limited liability, centralized management, continuity of life, and transferability of interests, and advise members of the State Bar of Wisconsin to heed the warnings and pitfalls pointed out in the opinion. A special warning is given concerning the point that it is ethically improper for lawyers to join in a profit sharing plan if non-lawyers are included as beneficiaries in the plan, because of Canon 34. It is proper to pay nonlawyer employees of the firm or corporation out of fees either presently or on a deferred basis.

In summary, it can be said that the substance and not the form of the entity controls. Each lawyer must observe the Canons of Ethics, as must the corporation. (Note: DR 2-102(B), DR 3-102(A), and DR 5-107(C) would give same result.)

The preceding advice applies to the name of the organization. A law corporation or firm may not have a name which would be offensive to the Canons, so that the firm name should remain the same with the requirement that Chapter 350, Laws of 1961, requires that some corporate designation be attached. It

would be proper to use the name X,Y,Z Lawyers, S.C. or X,Y,Z Corporation. The Act itself states that the corporate name shall end with the word "Chartered," "Limited," "Service Corporation," or "S.C." The name must not be misleading or deceptive. (Note: See DR 2-102(B), Code of Professional Responsibility and Sec. 180.99, Stats.)