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PROFESSIONAL MEN SUCH AS DOCTORS MAY ASSOCIATE AS A PARTNERSHIP—§§1775.05, 1783.01, 4731.22 (E) R.C.

SYLLABUS:

1. Professional men such as doctors may associate as a partnership under Section 1775.05, Revised Code, as a limited partnership under Section 1781.01, Revised Code, and as a limited partnership association under Section 1783.01, Revised Code.

2. The provisions of division (E) of Section 4731.22, Revised Code, do not preclude physicians or surgeons from associating as such a partnership, limited partnership, or limited partnership association but do apply to all practicing physicians and surgeons.

Columbus, Ohio, March 10, 1961

Hon. H. M. Platter, Secretary  
The State Medical Board, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The State Medical Board has been asked to obtain an opinion from you to determine whether professional men such as doctors who cannot incorporate in Ohio could apply for association treatment under Ohio Partnership Association. The Internal Revenue service I am informed has recently issued a set of proposed regulations under the Internal Revenue code, section 7701A3 under which a group of professional persons will be treated as a corporation (for Federal tax purposes) even though this group is a partnership or partnership association under the state law. It is stated that the proposed regulation contains five general corporation characteristics, which if possessed by an association of professionals may qualify it for taxation as a corporation. These characteristics are:

- “1. Associates and profit-making business objectives.
- “2. Continuity of life.
- “3. Centralization of management.
- “4. Limited liabilities.
- “5. Transferability of interest.

“The inquirers for an opinion are particularly interested in the effect of the Ohio law on association status for professionals. The attention is also called to the fact that Ohio has another statutory device called the limited partnership association, Ohio revised code section 1783. This association has the corporate attributes of centralized control, continuity of life, and limited liability, in addition to having associate and profit-making objectives.

“It is stated that the statute is silent as to whether business includes a profession and for this reason it is deemed necessary to determine whether professionals who cannot incorporate in Ohio, could qualify for association treatment under Ohio’s Partnership Association. Will you not advise the State Medical Board on these points and further whether there are existing laws on the statute books of Ohio to prevent such as corporate practice by physicians and the provisions in section 4731.22, paragraph E, any division of fees or charges or any agreement or arrange-

ment to share fees or charges made by any physician or surgeon with any other physician or surgeon or with any other person? Are there any statutory provisions in the Ohio law which prevent or limit such undertakings by professionals?"

As you note in your letter or request, professional men such as doctors are barred from practicing under a corporation status. In this regard, Section 1701.03, Revised Code, provides :

"A corporation may be formed for any purpose or purposes, *other than for carrying on the practice of any profession*, for which natural persons lawfully may associate themselves \* \* \*."

(Emphasis added)

The question to decide, therefore, is whether doctors may practice under the partnership, limited partnership, and limited partnership association laws of this state.

Division (A) of Section 1775.05, Revised Code, defines a *partnership* as follows :

"A partnership is an association of two or more persons to carry on as co-owners a business for profit."

Since under Section 1775.01, Revised Code, "business" as used in Section 1775.05, *supra*, includes every trade, occupation, or *profession*, it follows that two or more professional men, such as doctors, may form a partnership and practice thereunder.

Section 1781.01, Revised Code, defines a *limited partnership* as follows :

"A limited partnership is a partnership formed by two or more persons under the provisions of Section 1781.02 of the Revised Code, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by obligations of the partnership."

Also, Section 1781.03, Revised Code, states :

"A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking and insurance."

It will be noted that two or more persons may form a limited partnership and may carry on any business which a partnership may carry on, except banking and insurance. Accordingly, two or more professional men, such as doctors, may form a limited partnership and practice thereunder.

Coming now to the *limited partnership association*, 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 the purpose of conducting any business or occupation* within the United States or elsewhere, *except for dealing in real estate or for banking*, whose principal office or place of business will be established and maintained in this state, by subscribing and contributing capital to such association, which capital shall alone be liable for its debts, such persons may sign and acknowledge a statement, in writing, before some officer competent to take the acknowledgement of deeds, in which must be set forth the full names of such persons; the amount of capital subscribed for by each; the total amount of capital, one third of which shall be paid within thirty days of the filing of their statement with the county recorder as provided in this section and two thirds of which shall be paid within twelve months thereafter; the character of the business to be conducted, and its location; the name of the association, with ‘limited’ as part of it; the contemplated duration of the association, which in no case shall exceed twenty years; and the names of the officers of the association, selected in conformity with sections 1783.01 to 1783.12, inclusive, of the Revised Code. Any amendment of such statement shall be made only in like manner. Such statement and amendments must be recorded in the office of the county recorder of the proper county.

“Such association shall not loan its credit, its name, or its capital to any person or corporation.”

(Emphasis added)

Said Section 1783.01 clearly authorizes *persons* to form limited partnership associations for the purpose of conducting *any business or occupation except real estate or banking*. Professional men being persons, the question remains whether in practicing a profession a person is conducting a business or occupation.

Chapter 1783., Revised Code, dealing with limited partnership associations, does not define either the word “business” or the word “occupation.” The word “occupation” is defined, however, 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.”

Also in the case of *Industrial Commission v. Roth*, 98 Ohio St., 34, at page 38, it is stated :

“ ‘Occupation’ has been defined by the courts of this and other states to be ‘that particular business, *profession*, trade, or calling, which engages the time and efforts of an individual: In other words—the employment in which one regularly engages, or the vocation of one’s life.’”

(Emphasis added)

I am constrained to conclude, therefore, that a person who is practicing a profession is conducting an occupation within the purview of Section 1783.01, *supra*.

Without here detailing the characteristics of a corporation as opposed to a limited partnership association, I am aware that the two types of organization are similar in many ways and that the question might be raised that a limited partnership association can not, therefore, be used by professional men. Answering this argument, it will be noted that the restriction of Section 1701.03, *supra*, applies strictly to corporations and that corporations are governed by specific statutes not connected in any way with those dealing with limited partnership associations. Also, Chapter 1783., *supra*, dealing with limited partnership associations, contains no restriction against the use of such a business structure by professional men.

Further on this point, in my Opinion No. 1502, issued on June 24, 1960, I held in the 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.”

And in that opinion, I also stated :

“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.”

Returning to the instant question, it will be noted that every physician or surgeon practicing in Ohio must be certified by the medical board whether or not he is a partner or limited partner in an association.

Your letter of request asks whether “there are any statutory provisions in the Ohio law which prevent or limit such undertakings by professionals.”

You also refer specifically to Section 4731.22, Revised Code, which reads in part :

“The state medical board may refuse to grant a certificate to a person guilty of fraud in passing the examination, or at any time guilty of felony or gross immorality, grossly unprofessional or dishonest conduct or addicted to the liquor or drug habit to such a degree as to render him unfit to practice medicine or surgery.

“ ‘Grossly unprofessional or dishonest conduct’ as used in this section means :

“\* \* \*

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\* \* \*

“(E) Any division of fees or charges, or any agreement or arrangement to share fees or charges made by any physician or surgeon with any other physician or surgeon, or with any other person.

“The board, by a vote of not less than five members, may revoke or suspend a certificate for like cause.”

On reviewing the above provision of law I am of the opinion that it does not act to preclude physicians and surgeons from organizing under the partnership, limited partnership, or limited partnership association statutes. In the first place, I do not consider that the organizing of any of such associations would automatically mean that there would be a division of fees under division (E) of Section 4731.22, *supra*. In this regard, it would appear that the decision as to what is a division of fees is left solely to the discretion of the state medical board, which is in the best position to make such a determination. In the second place, even if there were a division of fees, such is not positively prohibited by statute. Here again, action against a physician or surgeon is at the discretion of the board.

In reaching my conclusion as to the effect of division (E) of Section 4731.22, *supra*, on the question at hand, I do not wish to imply that physicians or surgeons who are members of partnership, limited partnerships, or limited partnership associations are excluded from the provisions of that division. That is, it is possible that any of such persons might practice in such a way as to violate that provision of law and, if so, the state medical board would have authority to act just as if the particular persons involved were not members of such associations. In short, my conclusion is that said division (E) does not preclude physicians and surgeons from organizing such associations but the restriction of that

division applies to all physicians and surgeons whether practicing alone or in one of such business associations.

Accordingly, it is my opinion and you are advised :

1. Professional men such as doctors may associate as a partnership under Section 1775.05, Revised Code, as a limited partnership under Section 1781.01, Revised Code, and as a limited partnership association under Section 1783.01, Revised Code.

2. The provisions of division (E) of Section 4731.22, Revised Code, do not preclude physicians or surgeons from associating as such a partnership, limited partnership, or limited partnership association but do apply to all practicing physicians and surgeons.

Respectfully,

MARK McELROY

Attorney General