

**OPINION
66-16**

January 12, 1966 (OPINION)

Honorable Ben Meier

Secretary of State

RE: Architects - Incorporation - Directors and officers

This is in response to your request for an opinion pertaining to Chapter 10-31, as amended by Chapter 106 of the 1963 Session Laws. Your specific questions are as follows:

"Must architects be incorporated under the Professional Corporation Act or may they be incorporated under the Business Corporation Act?

"Providing architects must be incorporated under the Professional Corporation Act, must all incorporators be licensed architects? Also, must there be more than one officer of the corporation?" (Underscoring yours.)

To resolve the questions submitted, it becomes necessary to determine whether or not architects as such constitute a professional service as such term is defined in Section 10-31-01 of the North Dakota Century Code. Under this section the term "professional service" is defined to mean as follows:

" * * * the personal service to the public which requires a license as a condition precedent to the rendering of such service and which prior to the passage of this chapter could not be performed by a corporation."

Chapter 43-03 of the North Dakota Century Code sets forth the various regulatory statutes pertaining to architects. Section 43-03-09 of said chapter provides as follows:

" * * * No person shall practice architecture as a profession in this state unless he has obtained from the board a certificate of registration and is registered as an architect." (Emphasis supplied.)

The subsequent statutes set forth the procedure to be followed in obtaining a certificate and the qualifications to be eligible for such certificate. While the statutes refer to a certificate of registration, nevertheless, this is in effect a license. Chapter 43-03, in effect, treats the certificate of registration as a license. (See Chapter 43-03-15 where the statute refers to the license fee and Section 43-03-03 which refers to licensed architect.) Chapter 43-03 does not in specific terms define what comes within the term of "practicing architecture." Exemptions are provided for under Section 43-03-02, but such exemptions are not helpful in determining whether or not the practice of architecture in itself is a profession, except possibly in a negative manner.

In reviewing the provisions of Chapter 43-03, it becomes quite apparent that those who qualify under said chapter are considered to be professional architects. The term "professional" as found in the dictionary seems to indicate that if the services are more of a mental than manual nature, they are considered professional. This in itself is not too conclusive. However, in considering the statutory definition of the term "professional service" as found in Section 10-31-01 and particularly the language referring to "personal" services which requires a license as a condition precedent would bring architects as contemplated under Chapter 43-03 within said definition. As to the remaining statutory provision that such personal service cannot be performed by a corporation prior to the passage of Chapter 10-31, we must again examine the provisions of Chapter 43-03. Section 43-03-10 provides as follows:

"REGULATION OF USE OF TERM 'LICENSED ARCHITECTS.' No person shall use the title 'licensed architect' nor any violation of the same, nor any other words, letters, or device to indicate he is a licensed architect, without being registered as an architect in accordance with the provisions of this chapter. In a copartnership of licensed architects, each member of the partnership shall hold a license to practice."

It should be specifically noted that the language here, in effect, proscribes the performance of such services by a corporation. Because it requires each member of a partnership to hold a license to engage in the practice of architecture, it is therefore our opinion that the architects referred to in Chapter 43-03 are considered to be performing a professional service as said term is used in Chapter 10-31 and, as such, if it is intended to form a corporation such corporation must be formed under the provisions of Chapter 10-31 and not under the Business Corporation Act. It is our further opinion that all incorporators under the Professional Corporation Act must all be licensed architects.

As to your further question, "* * * must there be more than one officer of the corporation?", Section 10-31-06 is controlling. The pertinent provision thereof is as follows:

"* * * A professional corporation which has only one shareholder need have only one director, who shall be such shareholder. He shall also serve as the president and treasurer of the corporation. The other officers of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president."

Thus, in order to satisfy the requirements of the Business Corporation Act in addition to the provisions of Chapter 10-31. (Professional Corporations), more than one officer is required. However, pursuant to the above quoted statutory provisions, the other officers, except as provided for in Chapter 10-31, need not be members of the profession. It should be observed, however, that the other officers who are not members of the profession may not perform any professional services. In this respect, we call your attention to the provisions of Section 10-31-08.

HELGI JOHANNESON

Attorney General