

**OPINION
73-104**

April 9, 1973 (OPINION)

Donald L. Moum, D.D.S.
Secretary-Treasurer
North Dakota Board of
Dental Examiners
Box 547
Mandan, ND 58554

Dear Doctor Moum:

This is in response to your letter in which you request an opinion whether or not a professional dental corporation organized under Chapter 10-31 of the North Dakota Century Code may use a trade name or false name as its corporate name. You also call our attention to section 43-28-18 of the North Dakota Century Code and specifically subsection 11 which provides as follows:

"43-28-18. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE AND CERTIFICATE. The board may revoke or suspend the license and the certificate of registration of any dentist who has:

* * *

1. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners; provided, however, that a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of such association;

* * * "

Your specific question as restated is: "Can a professional dental corporation use a corporate name made up of words other than the true names of the dentist's members?"

Chapter 43-28 of the North Dakota Century Code pertains to the practice of dentistry. It is a regulatory measure and was enacted in 1959. At that time the professional corporation act had not been enacted. The professional corporation act (Chapter 10-31) did not come into being until 1963.

Chapter 47-25 of the North Dakota Century Code regulates the use of trade names. The term "trade name" implies the use of a name other than the true name of the person or entity involved.

This office, in 1960, in a letter to Mr. Ben Meier dated September 3, concluded that a corporation was not entitled to use a trade name and could not use a trade name. There is no need for the adoption of a trade name for a corporation. It can select any name unless the name is already used by someone else by amending the articles of incorporation.

The articles of incorporation among other things requires setting forth the name of corporation. (See section 10-19-53.) If a corporation wishes to change its name, it may do so by amending its articles. (See section 10-19-58.)

We do not deem it necessary to determine whether or not the term "person" as used in chapter 47-25 would apply to a corporation because the laws pertaining to corporation are comprehensive and no authority has been given to a corporation to acquire and use a trade name. Therefore the provisions of section 1-01-28 of the North Dakota Century Code which defines the word "person" would have no application to the question at hand.

Chapter 10-31 which was enacted in 1963 was specifically designed for the organization of professional corporations. Section 10-31-05 clearly indicates that the corporation is to operate under the corporate name, together with the word "chartered", "limited" or the abbreviation "Ltd." or "professional corporation", or the abbreviation "P.C.". It also prohibits the use of the word "company" or "corporation" alone.

This section provides as follows:

"10-31-05. CORPORATE NAME. The corporate name of a corporation organized under this chapter shall contain the word 'chartered', 'limited' or the abbreviation 'Ltd.', or 'professional corporation', or the abbreviation "P.C.". The use of the word 'company', 'corporation' or 'incorporated' or any other word, abbreviation, affix or prefix indicating that it is a corporation, in the corporate name of a corporation organized under this chapter, other than the words 'chartered', 'limited', or 'professional corporation' or the abbreviations 'Ltd.' or 'P.C.', is specifically prohibited."

Section 10-31-09 among other things provides that "Nothing in this chapter shall restrict or limit in any manner the authority and duty of the regulating boards for the licensing of individual persons rendering professional services. No professional corporation may do any act which is prohibited to be done by any individual persons licensed to practice the profession which the professional corporation is organized to render."

This provision must be read in conjunction with the provisions of chapter 43-28 and the remaining provisions of chapter 10-31. If this language were to be singled out as being controlling in all respects, it would actually negate the entire provisions of chapter 10-31.

We cannot accept as a fact that the legislature enacted chapter 10-31 as an idle act. In examining the provisions of chapter 10-31 and chapter 43-28, it becomes quite apparent that these provisions are *pari materia*.

Statutes which are *pari materia* must be harmonized and reconciled wherever possible. If it is not possible to harmonize or to reconcile the statutes, the one enacted later in time will prevail as an exception to the one enacted earlier. The latest enactment is considered an exception to or a qualification of the prior statute.

(See 82 C.J.S. Statutes Section 363 pages 837-838.) This rule of law is in harmony with sections 1-03-09.1, 1-02-09 and 1-02-08 which in substance provide that if there is a conflict within the same statute or statutes passed during the same session, the one enacted latest prevails. The authority in C.J.S. cited above is merely an extension of the same concept which has been recognized by our legislature in the aforementioned sections.

Section 43-28-18(11) related to the practice of dentistry under the then existing law and prior to the time when a professional corporation could be organized. At that time, 1959, the only type of common effort could be under a partnership. Subsection 11 pertains to the practice of dentistry under a partnership name. However, with the enactment of chapter 10-31 a new concept came into being.

It is therefore our opinion that a corporation organized under chapter 10-31 may use the corporate name provided it is in full compliance with the provisions of section 10-31-05. A corporate name is not a trade name or false name. It is the name of the corporation.

I trust this answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General