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FILE NO. S-802

**CORPORATIONS:
Professional Service Corporations -
Legality of Dentists Incorporating**

Honorable Michael J. Howlett
Secretary of State
213 State House
Springfield, Illinois 62706

Dear Secretary Howlett:

I have your letter wherein you inquire as to the
legality of permitting persons engaged in the practice of
dentistry to incorporate.

In 1909, there became effective "AN ACT to
regulate the practice of dental surgery and dentistry in the
State of Illinois and to repeal certain acts therein named"
[hereafter Illinois Dental Practice Act]. (L. 1909, p. 277.)
Section 18 of this Act recognized the right of corporations
to practice dentistry. (Ill. Rev. Stat. 1909, ch. 91. par.

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44h.) In 1933, the Illinois Dental Practice Act was amended. (L. 1933, p. 708.) Section 18a was added to the Act, declaring it to be unlawful for a corporation to practice dentistry. (Ill. Rev. Stat. 1933, ch. 91, par. 72a.) Section 18 was amended to conform with section 18a. Ill. Rev. Stat. 1933, ch. 91, par. 72.

It was unlawful for a corporation to practice dentistry until September 15, 1969. On this date there became effective the Professional Service Corporation Act. Ill. Rev. Stat. 1973, ch. 32, pars. 415-1 et seq.

Section 415-2 of the Professional Service Corporation Act states that it is the legislative intent to authorize the incorporation of individuals who are licensed to render a professional service. Section 415-3.5 of the Professional Service Corporation Act (Ill. Rev. Stat. 1973, ch. 32, par. 415-3.5) defines a professional service as follows: "'Professional Service' means any personal service which requires as a condition precedent to the rendering thereof the obtaining of a license from a State agency or from the United States Patent Office or the Internal Revenue Service of the United States Treasury Department and which prior to the effective date of this Act could not be performed by a corporation by reason of law."

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Dentistry falls within the definition of a "professional service". An individual may not practice dentistry without a license. (Ill. Rev. Stat. 1973, ch. 91, par. 58.) As pointed out earlier, prior to the effective date of the Professional Service Corporation Act (September 15, 1969), it was unlawful for a corporation to practice dentistry. It seems clear that the intent of the Professional Service Corporation Act was to authorize individuals engaged in the practice of dentistry to incorporate.

Any doubt as to whether individual dentists may incorporate was certainly removed by the provisions of the last paragraph of section 415-4 of the Professional Service Corporation Act (Ill. Rev. Stat. 1973, ch. 32, par. 415-4) which reads as follows:

"The provisions of this Act shall not be considered as repealing, modifying or restricting the applicable provisions of law regulating the several professions except insofar as such laws are in conflict with the provisions of this Act, however, the provisions of this Act shall take precedence over any law which prohibits a corporation from rendering any type of professional services. Nothing contained in this Act shall prohibit a professional corporation from employing ancillary personnel."

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I am of the opinion that on September 15, 1969, the effective date of the Professional Service Corporation Act, section 18a of the Illinois Dental Practice Act (Ill. Rev. Stat. 1969, ch. 91, par. 72a) was impliedly repealed.

A problem, however, has arisen due to the amendment of section 18a by House Bill 3342. (Also known as Public Act 77-2713.) House Bill 3342 was approved by the Governor on August 18, 1972, and ostensibly became effective on January 1, 1973. Only the penalty provisions of section 18a were changed by House Bill 3342.

The issue, then, is whether the amendment of section 18a of the Illinois Dental Practice Act reenacts section 18a so that the practice of dentistry by a corporation is now unlawful and individuals licensed to practice dentistry may not incorporate. A similar controversy was resolved by the Illinois Supreme Court in Shelton v. City of Chicago, 42 Ill. 2d 468.

In Shelton, plaintiff filed suit against the city claiming he was injured during a mob action and, therefore, pursuant to the provisions of section 1-4-8 of the Illinois

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Municipal Code (Ill. Rev. Stat. 1967, ch. 24, par. 1-4-8) he was entitled to recover from the city. The city moved to dismiss the complaint on the grounds that section 1-4-8 had been repealed.

In 1967, section 1-4-8 of the Illinois Municipal Code was expressly repealed by the General Assembly. At the same session, however, the General Assembly also amended section 1-4-8. Plaintiff argued that the amendment of this section was approved by the Governor two weeks after he approved the repeal of this section, therefore, the amendment reenacted section 1-4-8. The Illinois Supreme Court held that the amendment did not reenact the statute. The court pointed out that the key to a resolution of this problem was legislative intent. The court concluded that the legislature did not intend to reenact the repealed law.

This decision was based upon an examination of the facts surrounding the amendment of section 1-4-8. It was determined that the purpose of this amendment was merely to remove obsolete terms from section 1-4-8 and to replace said terms with language that was in conformance with recent changes

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in the State Constitution. At page 471, the court states:

"We find it unnecessary, in the circumstances of this case, to consider what, if any, significance should be accorded to the fact that the amendatory act was approved by the Governor more than two weeks after he had approved the repealing act. The amendatory act was one of a package of 174 bills which were prepared by the Legislative Reference Bureau to bring various statutes into conformity with the new Judicial Article of the Constitution, to delete obsolete terms, or to combine or rearrange sections, without making substantive changes. The single description applicable to all 174 bills which was contained in the Legislative Synopsis and Digest was as follows:

'HB-915 to 1089 INCL. McDEVITT AND PARKHURST

Amends, combines, resections or deletes terms in the following Acts or sections, making no substantive change:' (here followed a listing of the individual bills by number, together with a reference to the section or sections affected by each bill.)

It cannot, we think, be fairly contended that the General Assembly intended, by a bill which purported to make no change of substance, to re-enact the repealed provisions of section 1-4-8.

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House Bill 3342 (Public Act 77-2713), which amended section 18a of the Illinois Dental Practice Act, was introduced into the legislature as a part of a package of 452 bills. The

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purpose of those bills was to delete terms made obsolete by the then proposed Unified Code of Corrections, (HB 811; P.A. 77-2097), and to bring the various statutes amended into conformance with the Unified Code of Corrections. This purpose was described at page 774 of the 1972 Final Legislative Synopsis and Digest as follows: "HB-3082 to 3534, Inc. SEVCIK AND HAROLD WASHINGTON. Changes penalty provisions in following statutes to conform to the Unified Code of Corrections, (HB-811). Effective January 1, 1973." (Here followed a listing of the individual bills by number, together with a reference to the section or sections affected by each bill and the date of final gubernatorial action.)

An examination of the Illinois Dental Practice Act, prior to January 1, 1973, reveals that there were five sections in the act containing penalty provisions. (Ill. Rev. Stat. 1971, ch. 91, pars. 65, 70, 71b, 72 and 72a.) All five sections were amended by House Bill 3342 to comply with the Unified Code of Corrections. Additionally, the effective date of House Bill 3342 (January 1, 1973) was also the effective date of the Unified Code of Corrections.

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Only the penalty provisions of section 18a were amended by House Bill 3342. There was no change in the substantive provisions of this section pertaining to the practice of dentistry by a corporation.

In light of Shelton v. City of Chicago, 42 Ill. 2d 468, I am of the opinion that the legislature did not intend to reenact section 18a of the Illinois Dental Practice Act. The amendment to this section and hundreds of other sections of various statutes was designed merely to conform the penalty provisions of the statutes to the Unified Code of Corrections. Therefore, it is still lawful for individuals engaged in the practice of dentistry to incorporate. Corporations presently practicing dentistry are de jure corporations and their legal status was never affected by the amendment of the penalty provisions of section 18a.

Very truly yours,

A T T O R N E Y G E N E R A L