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SPRINGFIELD

November 26, 1980

FILE NO. 80-040

**BUSINESS ORGANIZATIONS:  
Close Corporations**

Honorable Alan J. Dixon  
Secretary of State  
State of Illinois  
Springfield, Illinois 62706

Dear Secretary Dixon:

I have your letter in which you ask whether a medical corporation or a professional service corporation can form a close corporation, or if existing, elect to become a close corporation under the Close Corporation Act. For the reasons hereinafter stated, it is my opinion that both medical and professional service corporations can form a close corporation, or elect to become a close corporation.

Section 2 of the Medical Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 632), which relates to the formation of a corporation under that Act, provides as follows:

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"One or more persons licensed pursuant to the Medical Practice Act, as heretofore or hereafter amended, may form a corporation pursuant to the Business Corporation Act, \* \* \* ."

Section 3 of the Medical Corporation Act (Ill.

Rev. Stat. 1979, ch. 32, par. 633) provides:

"The Business Corporation Act, as heretofore or hereafter amended, shall be applicable to such corporations, including their organization, and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other corporations, except so far as the same may be limited or enlarged by this Act. If any provision of this Act conflicts with the Business Corporation Act this Act shall take precedence."

Medical corporations, therefore, are subject to the Business Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 157.1 et seq.). Section 3.1 of that Act expressly provides that medical corporations may be organized under it:

"Medical corporations, as authorized by 'The Medical Corporation Act', enacted by the Seventy-third General Assembly, as hereafter amended, may be organized under this Act."

Professional service corporations are authorized by the Professional Service Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 415-1 et seq.). Section 4 of the Act (Ill. Rev. Stat. 1979, ch. 32, par. 415-4), which is similar to section 3 of the Medical Corporation Act, provides as follows:

"'The Business Corporation Act' filed July 13, 1933, as now or hereafter amended, shall be applicable to professional corporations organized under this Act, and they shall

enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations, except where inconsistent with the letter and purpose of this Act. \* \* \*

\* \* \*

"

As with medical corporations, the intent to bring professional service corporations under the provisions of the Business Corporation Act is expressly provided by section 3.2 of the Act (Ill. Rev. Stat. 1979, ch. 32, par. 157.3-2):

"Professional Service Corporations, as authorized by 'The Professional Service Corporation Act' enacted by the 76th General Assembly, as hereafter amended, may be organized under this Act."

It is clear from the statutes that both medical corporations and professional service corporations may be incorporated under the Business Corporation Act. Both the Medical Corporation Act and the Professional Service Corporation Act, provide special provisions which supplement, but do not replace, the provisions of the Business Corporation Act.

The formation of a close corporation is covered in section 4 of the Close Corporation Act (Ill. Rev. Stat. 1979, ch. 32, par. 1204), which provides as follows:

"Formation of a close corporation. A close corporation shall be formed in accordance with the provisions of The Business Corporation Act, as now or hereafter amended, except that:

(a) Its articles of incorporation shall contain a heading stating the name of the

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corporation and that it is being organized as a close corporation, and

(b) Its articles of incorporation shall contain the provisions required by Section 3 of this Act."

Section 5 of the Act (Ill. Rev. Stat. 1979, ch. 32, par. 1205) provides as follows:

" \* \* \* Any corporation organized under The Business Corporation Act may become a close corporation under this Act, \* \* \* ."

The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the true intent of the legislature in enacting the law. (Electrical Contractors Association of City of Chicago, Inc. v. Illinois Building Authority (1965), 33 Ill. 2d 587, 591-592.) House Bill 451, which became Public Act 80-672, was debated in the Illinois House on April 1, 1977. In discussing the bill, Representative Porter stated as follows:

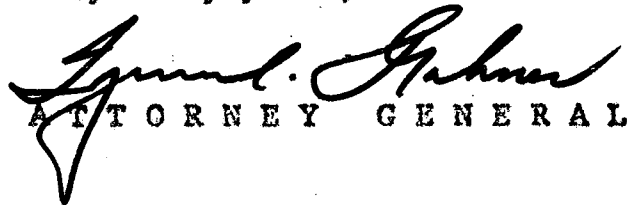
" \* \* \* The point I want to make about, it creates a Closely-held Corporations Act. And the point that needs to be made is that the Act is entirely permissive to any existing corporation or any new corporation can be formed as they are now under the Business Corporation Act. And if they want to be formed under the Closely-held Corporations Act, they can be. There's no requirement that any corporation be formed under the Act. \* \* \* "

Therefore, since both medical and professional service corporations are corporations which may be organ-

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ized under the Business Corporation Act, it is clear that such corporations can avail themselves of the provisions of the Close Corporation Act.

Very truly yours,

  
ATTORNEY GENERAL