

OPINION
69-81

January 3, 1969 (OPINION)

Honorable Ben Meier

Secretary of State

RE: Contractors - License - Transfer to Corporation

This is in response to your letter in which you ask an opinion on the following:

"I respectfully request your opinion whether or not, under the contractor's license law, (Chapter 43-07 N.D.C.C.), an individual or a partnership who holds a valid contractors license may incorporate and have the corporation use the license held by the individual or the partnership or will it be necessary for the corporation to secure a new license in its own name in order to operate as a contractor.

"It is understood that the individual will be the owner of the corporation and the members of the partnership will be the owners of the corporation."

A contractor's license is not based on public necessity or convenience such as carriers or utilities and other similar activities. A contractor may obtain a license upon making the proper application and by meeting the required qualifications. The applicant is not required to establish that a public necessity or convenience exists, nor must such factor be considered by the registrar in granting or denying a license. The license in question must be considered as a personal privilege.

A license being a personal privilege cannot as a general rule be communicated or assigned to another. This rule, however, is subject to modification under certain circumstances where equity requires a transfer in such instances where the licensee dies or where one member of a licensed firm transfers his interest to another for which the license fee is paid and the legal representative or remaining partner carries on the trade or business in the same place. (See 33 Am. Jur. Licenses Section 6, Page 330).

There are distinct differences between corporations and natural persons. For purposes of this question we will refer to those differences which we believe are significant.

A corporation as distinguished from a natural person is an artificial being created pursuant to law with either a perpetual existence or a limited specified time with renewal options. A corporation exists only in law whereas a natural person has an existence on its own. A corporation is a legal entity distinct and separate from the members who compose it and has only such powers as are conferred upon it by law. As to the question here, it should be noted that any disability against a corporation is limited to same, whereas the liability of individuals doing business as such extends to any assets or property

of the individual. It necessarily follows that a change of a business from an individual or individuals to a corporation or a change from a partnership to a corporation creates a complete new legal entity.

Ownership of the stock of a corporation does not determine the stature, worthiness or liability of a corporation, but rather the directors under whose control the corporation is operated and directed determines same. Basically, liability and assets of a corporation and not the individual determines the financial soundness of a corporation.

It is therefore our opinion that a license held by an individual or partnership may not be transferred to a newly created corporation even though the newly created corporation is composed of the same individuals or partnership. Such newly created corporation would be required to obtain a new license on its own qualifications. However, as a successor, the newly created corporation could refer to the projects performed by the individuals or corporation in establishing its reliability as a corporation. It would not necessarily follow that the newly created corporation has the same capacity or reliability, but such information could be used merely to indicate the type of work performed.

HELGI JOHANNESON

Attorney General