

1976 S.C. Op. Atty. Gen. 334 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4474, 1976 WL 23091

Office of the Attorney General

State of South Carolina

Opinion No. 4474

October 4, 1976

*1 Professional associations may issue shares to persons who are trustees of an Employee's Stock Ownership Plan so long as all trustees and all beneficiaries are persons duly licensed or otherwise legally authorized to render the same professional service as that for which the professional association was organized.

TO: O. Frank Thornton
Secretary of State of South Carolina

This is in response to your recent request for an opinion as to whether shares of a professional association organized pursuant to South Carolina Code of Laws Section 56-1601 et seq. (Cum. Supp. 1975), may be issued to an Employee's Stock Ownership Plan.

For the purpose of this opinion it is my understanding that an Employee's Stock Ownership Plan is defined as a trust created by an organization for the purpose of providing retirement benefits for the organization's employees. Further, it is my understanding that your specific inquiry involves an Employee's Stock Ownership Plan for the employees of a professional association and that under the proposed plan both the trustee and all of the potential beneficiaries of the plan would be licensed in this State to perform the services for which the association was organized.

South Carolina Code of Laws Section 56-1610 (Cum. Supp. 1975) provides in pertinent part:

A professional association may issue its capital stock if it is a stock-type association or accept as members of the professional association, if a non-stock association, only persons who are duly licensed or otherwise legally authorized to render the same professional service as that for which the professional association was organized.

So long as all trustees, holders of the legal title, and all beneficiaries, holders of the equitable interest, of the Employee's Stock Ownership Plan 'are duly licensed or otherwise legally authorized to render the same professional service as that for which the professional association was organized,' the association may issue shares of an Employee's Stock Ownership Plan to such trustees. This opinion assumes that the issuance of said stock will conform to all requirements of the South Carolina Business Corporation Act of 1962, S.C. Code Ann. section 12-11.1 et seq., as required by Section 56-1617.

John L. Choate
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 334 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4474, 1976 WL 23091