

Letter from Attorney General on Senate Bill No. 958

May 23, 1973

The Honorable Marvin Mandel
Governor of Maryland
State House
Annapolis, Maryland 21401

Re: Senate Bill 958

Dear Governor Mandel:

The title to this bill is unconstitutionally misleading. After referring to the repeal and reenactment of Article 23, Section 440(b) of the Maryland Code, it recites that the purpose of the bill is "to provide for a reduction in the number of minimum shareholders for the formation of a Professional Association from five (5) to four (4) share-holders".

An examination of the text of the bill establishes that the bill does not do what its title indicates it does. Rather, the bill provides that, if the name of a professional service corporation is to be one which does not include the name of any shareholder, that corporation must have at the time of its incorporation, and must continue to have, at least four shareholders. These provisions with respect to permissible corporate names are entirely separate and apart from those in Sections 433 and 440(a), which permit any "individual or group of individuals" falling within the remaining provisions of the Act to avail himself or themselves of the Professional Service Corporation Act, further requiring that, as a general rule, the corporate name must include, inter alia, the last names of some or all of the shareholders. In simple terms, there is no existing requirement that at least five shareholders form a professional association nor does this bill change the existing law to create a new requirement of at least four shareholders. All of the changes effected by this bill relate to the name of the corporation, not to its "formation".

A second problem is that the bill purports to repeal and reenact, with amendments, Section 440(b), while in its text it includes only subsection (1). The fate of existing subsections (2) and (3) is unclear but the indication is that they have been repealed because of the fact that they were not included within the reenactment. We need not reach that question, however, because of the misleading title which, in our view, is dispositive of the question and most likely would cause a court in a properly framed case to declare the bill unconstitutional.

Very truly yours,

/s/ Francis B. Burch
Francis B. Burch
Attorney General
