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June 13, 2008

Anthony S. di Santi, Chair
David R. Johnson, Deputy Counsel
Authorized Practice Committee
The North Carolina State Bar
208 Fayetteville Street
Post Office Box 25908
Raleigh, North Carolina 27611

Re: Allegation of Unauthorized Practice of Law
Your File No. 07AP0011.

Dear Mr. di Santi and Mr. Johnson:

We have been asked by our client, LegalZoom.com, Inc. (“LegalZoom”), to prepare an analysis of whether N.C. Gen. Stat. § 84-4, which provides that it is unlawful for any person or association of persons not an active member of the North Carolina State Bar to “organize” a corporation, applies to the services offered by LegalZoom.com, Inc. In our opinion, LegalZoom’s services do not constitute the “organization” of a corporation under § 84-4, and therefore do not constitute the unauthorized practice of law.

There is a clear, distinct and substantive difference between “organizing” a corporation and “incorporating” a corporation. We have prepared a brief analysis of this difference and its relationship to N.C. Gen. Stat. § 84-4. Since there is no case law interpreting the meaning of these terms in the context of both N.C. Gen Stat. § 84-4 and Article 2, Chapter 55 of the General Statutes, we must look to the statutory text and the official comments to Chapter 55 as well as legal dictionary definitions and the Model Business Corporations Act (the foundation for North Carolina Law) for their meanings.

The plain text of N.C. Gen Stat. § 84-4 does not contain any definition of the term “organize” beyond the prohibition of organization, and it does not contain any reference to “incorporating” as a prohibited act.

However, Black's Law Dictionary defines "incorporation" as "[t]he act or process of forming or creating a corporation." Black's Law Dictionary 907 (4th ed. 1968). N.C. Gen. Stat. § 55-2-01 provides that "[o]ne or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing." In addition, according to N.C. Gen. Stat. § 55-2-03(a), "[c]orporate existence begins when the articles of incorporation become effective" and the articles of incorporation become effective when they are filed with the Secretary of State unless a delayed effective date is specified. N.C. Gen. Stat. § 55D-13; N.C. Gen. Stat. § 55-2-03 (official comment). Therefore, because all that is required to form a corporation is the delivery of articles of incorporation to the Secretary of State for filing, the act of "incorporating" a corporation is the delivery of articles of incorporation to the Secretary of State for filing. LegalZoom provides the service of filing articles of incorporation for its customers. While this may technically constitute "incorporating," it does not constitute "organization," which is defined differently.

In contrast to "incorporating," "organizing" a corporation typically involves affirmative acts that may include the election of directors, adoption of bylaws, appointment of officers, and issuance of shares. These acts are accomplished at an organizational meeting *following* incorporation. *See* N.C. Gen. Stat. § 55-2-05(a) (and official comment, emphasis added). If a company is incorporated by an incorporator, the incorporator may appoint the initial director(s), or it may choose to organize the corporation. If the incorporator does not wish to organize the corporation, the incorporator instead must name the initial director(s), who will then be responsible for the organization of the corporation. *Id.* The initial director(s) are required to hold an organizational meeting for this purpose, at which they must elect additional directors (if necessary), adopt bylaws, appoint officers, and issue shares to the shareholders, among a variety of other corporate acts. *Id.* This organizational meeting does not have to be a formal meeting as such. Instead, the initial directors may take any action required or permitted to be taken at the organizational meeting without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each director. N.C. Gen. Stat. § 55-2-05(b); N.C. Gen. Stat. § 55-8-21(a).

Although the acts of "incorporating" and "organizing" a corporation are two distinct acts, the statute authorizes that both acts *may* be carried out by the incorporator(s) or by anyone who may be an incorporator. However, if an incorporator's first and only acts are to appoint a director or directors, as is the case with LegalZoom, then the job of "organizing" is borne by the director(s). N.C. Gen. Stat. § 55-2-01; N.C. Gen. Stat. § 55-1-40(16). "Organizing" a corporation may also be carried out by the initial director(s) and any "natural person legally competent to act" may be a director. N.C. Gen. Stat. § 55-8-03(a); N.C. Gen. Stat. § 55-1-40(13). In short, there is no requirement in Chapter 55 that either the act of "incorporating" or the act of "organizing" a corporation be carried out by a lawyer.

The issue in question is whether an online legal forms vendor engages in the unauthorized practice of law by assisting consumers with incorporating a business, and providing forms that may be used by the initial director(s) of that company to organize their a business. Under N.C. Gen. Stat. § 84-4, it is unlawful for any person or association of persons not an active member of the North Carolina State Bar to “organize” a corporation. As stated above, the statute does not define the term “organize” and there is no case law addressing the meaning of this term. So we must look again to Chapter 55 for guidance. As noted above, after the initial directors are named or appointed, to “organize” a corporation in the context of Chapter 55 means the affirmative acts of adopting bylaws, appointing officers, and issuing shares at an organizational meeting, following incorporation. Chapter 55 does not require these acts to be performed by a lawyer, but whether or not a lawyer is required to perform them, LegalZoom does not perform this service. Instead, once LegalZoom, as “incorporator” has completed the filing on behalf of its customer, and appointed the initial director(s) as specifically requested by the customer, LegalZoom’s services end. As a courtesy, LegalZoom informs each customer that the directors appointed must now engage in the organization of the company. Although LegalZoom makes forms available to assist the directors with organization, LegalZoom in no way performs these acts on behalf of the customer.

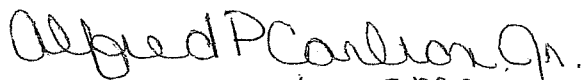
The North Carolina Supreme Court has held that N.C. Gen. Stat. § 84-4 “was not enacted for the purpose of conferring upon the legal profession an absolute monopoly in the preparation of legal documents;” rather, “its purpose is for the better security of the people against incompetency and dishonesty in an area of activity affecting general welfare.” *State v. Pledger*, 257 N.C. 634, 637, 127 S.E.2d 337, 339 (1962). For this reason, “[a] person, firm or corporation having a primary interest, not merely an incidental interest, in a transaction, may prepare legal documents necessary to the furtherance and completion of the transaction without violating G.S. 84-4.” *Id.* Therefore, where a member of the public purchases from a vendor forms that may be used to incorporate his/her business and subsequently, as a party in interest, perhaps as a director, performs the affirmative acts of “organizing” the corporation without the assistance of the vendor, the vendor has not violated N.C. Gen. Stat. § 84-4.

Our analysis of North Carolina law is consistent with, and supported by, a review of the Model Business Corporation Act. As with North Carolina law, under the Model Business Corporation Act the act of “incorporating” a corporation is separate from the acts constituting “organizing” a corporation. Model Bus. Corp. Act §§ 2.01, 2.05. The act of “incorporation” consists of signing the articles of incorporation and delivering them to the secretary of state for filing. Model Bus. Corp. Act § 2.01, official comment. “Organization” of the corporation takes place *after* “incorporation” and consists of holding an organizational meeting, electing directors if needed, appointing officers, adopting bylaws, and carrying on other business. Model Bus. Corp. Act § 2.05(a). As an incorporator, LegalZoom appoints the initial directors as instructed by the customer and provides no further service for that customer. Once LegalZoom’s services as incorporator are complete, it takes none of the actions that constitute “organization” of

the corporation; these actions are left up to the customer, who is legally authorized to do so without the use of an attorney.

In summary, the automated document preparation and filing service provided by LegalZoom does not constitute the "organizing" of a corporation, under both North Carolina law and the Model Business Corporation Act. LegalZoom's services therefore are not in violation of N.C. Gen. Stat. § 84-4.

Best regards,

A handwritten signature in cursive script that reads "Alfred P. Carlton, Jr.".

Alfred P. Carlton, Jr. *by SMG*
Allen and Pinnix, P.A.