

The State of South Carolina



Office of the Attorney General

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January 8, 1990

The Honorable John T. Campbell
Secretary of State
State of South Carolina
P. O. Box 11350
Columbia, South Carolina 29211

Dear Mr. Secretary:

As you have been advised, your letter of November 29, 1989 to Attorney General Medlock was referred to me for review and response. Your letter makes reference to Section 33-42-30 of the 1976 S. C. Code of Laws, as amended, which requires the name of each limited partnership, as set forth in its certificate of limited partnership, to contain the words "limited partnership," or the abbreviation "LP", or "L.P." You also refer to Section 33-42-45(b) which, for purposes of this discussion, is set forth below:

"(b) A limited partnership that conducts or intends to conduct business in this State under a name other than the name shown in its certificate of limited partnership (or in the case of a foreign limited partnership that has registered in this State, the name shown in its certificate of registration to transact business in this State) shall file with the Secretary of State an assumed name certificate which states the name shown on its certificate of limited partnership (or certificate of registration in the case of a foreign limited partnership), the name under which the limited partnership's business is to be conducted, which assumed name shall not be deceptively similar to the name of any domestic or foreign limited partnership authorized to transact business in this State, or to any reserved name pursuant to Section 33-42-40 and the address of the partnership's registered office required to be maintained in this State."

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Having referenced these statutory provisions, you then asked the following questions of this Office:

(1) If a limited partnership does adopt an assumed name, does the assumed name have to contain the word "Limited Partnership" or the abbreviation "L.P." or "LP"?

(2) Is a limited partnership limited to the registration of only one assumed name, or may they adopt, use and register as many assumed names as they desire? (See Section 33-42-1640 and the official comments following Section 33-42-45).

With respect to your first question, the provisions of Section 33-42-45 plainly do not contain any requirement that an assumed name adopted for use by a limited partnership include the words "limited partnership" or the abbreviation "L.P." or "LP". The statute simply provides that a limited partnership file with the Secretary of State an assumed name certificate on which is stated the name shown on the certificate of limited partnership and the name under which the limited partnership's business is to be conducted. Where the language of a statute is clear and unambiguous, it must be held to mean what it plainly says. Luck v. Pencar, 282 S.C. 643, 320 S.E.2d 711, (1984).

The second question which you posed appears to require an exercise in statutory construction to determine the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute should be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258, (1984).

With these principles of statutory construction in mind, it seems evident that one of the primary purposes of the statutes found in Chapter 42 is to provide notice to creditors and other third parties of the organizational status of the business entity with which such persons may be involved. (See: Comments to Section 33-42-10). Therefore, for example, the Legislature required that the name of each limited partnership should contain the words "limited partnership" or the abbreviation "LP" or "L.P." (See: Section 33-42-30). With its requirement that a limited partnership file an assumed name certificate with the Secretary of State, it seems evident that Section 33-42-45

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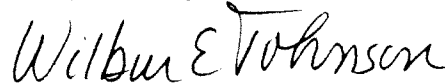
is in accord with the notice purposes incorporated into and manifested by the statutes which make up Chapter 42. (See: Comments to Section 33-42-45).

Although the provisions of Section 33-42-45(b) may be read literally so as to provide for the use of only one assumed name by a limited partnership, the statutes contain no provisions expressly restricting the number of assumed names available to a limited partnership. Significantly, the statutes also impose no penalties on a limited partnership for failing to register an assumed name. Consequently, even a literal reading of the statutes would yield a result whereby a limited partnership could register one assumed name and thereafter use as many other unregistered assumed names as it desired. Clearly, in such circumstance, the notice purposes of the statutes would be defeated. Therefore, it seems logical that the statutes should be interpreted so as to promote the achievement of the apparent legislative objective, rather than as a futile gesture on the part of the Legislature. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778, (1964). Accordingly, the statutes should be construed to permit a limited partnership to register multiple assumed names with the Secretary of State.

In conclusion, we would advise you that if a limited partnership does adopt an assumed name, the assumed name does not have to contain the words "Limited Partnership" or the abbreviation "LP" or "L.P.". Further, that a limited partnership is not limited to the registration of only one assumed name.

I trust that you will find the foregoing information to be responsive to your inquiries. Please let me know if I can be of further assistance.

Very truly yours,

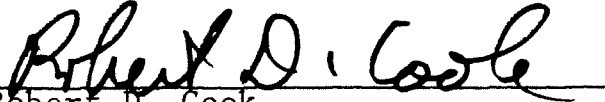


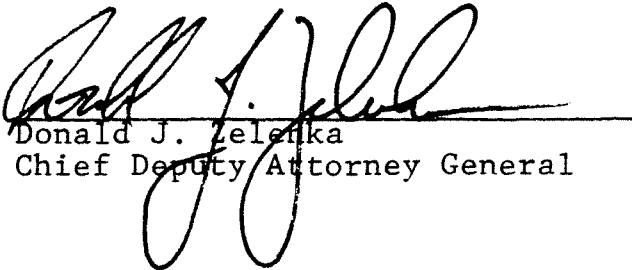
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