

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA  
RALEIGH, NORTH CAROLINA

**INTERPRETATION NO. 187**

TO: R. F. Martin, Director

FROM: R. B. Billings, Attorney

RE: Interpretation of General Statutes 59-1 to 59-30 Inclusive – Limited Partnerships

We received a memorandum on January 28, 1964, in which it is requested that we give an outline which would assist the field representatives in determining whether a limited partnership exists in certain instances.

Under the provisions of General Statutes 59-1 through 59-30 and various subsections thereunder is set forth the Uniform Limited Partnership Act. It would be unduly burdensome and possibly confusing to attempt to go into every subsection or phase of a limited partnership as set forth in the statutes. We are, therefore, making reference only to certain of the more pertinent provisions.

A limited partnership is defined in the act as follows:

“A limited partnership is a partnership formed by two or more persons under the provisions of S 59-2, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.” (G.S. 59-1)

It can be seen, therefore, that one of the basic characteristics of the limited partner is that he is not bound by the obligations of the partnership and is liable only to the extent of the contributions which he makes to the business. The act further provides that a limited partner's contribution may be cash or other property, but not services. (G.S. 59-4)

G.S. 59-2 relates to the formation of a limited partnership and sets forth the requirements necessary to be fulfilled in order that a limited partnership be brought into existence. This section reads as follows:

“(a) Two or more persons desiring to form a limited partnership shall:

- “(1) Sign and swear to a certificate which shall state:
- a. The name of the partnership;
  - b. The character of the business;

- c. The location of the principal place of business;
- d. The name and place of residence of each member; general and limited partners being respectively designated;
- e. The term for which the partnership is to exist;
- f. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;
- g. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;
- h. The time, if agreed upon, when the contribution of each limited partner is to be returned;
- i. R\The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution;
- j. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;
- k. The right, if given, of the partners to admit additional limited partners;
- l. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;
- m. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner, and
- n. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

“(2) File for record the certificate in the office of the clerk of the superior court of the county where the principal place of business is located according to the statement in such certificate.

“(b) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsection (a).”

The act also sets forth the rights of the limited partner. In this connection the limited partner has the same rights as a general partner to (1) have the partnership books kept at the principal place of business of the partnership and at all times to inspect and copy any of them, (2) have on demand true and full information of all things affecting the partnership and a formal account of partnership affairs whenever circumstances render it just and reasonable, and (3) have dissolution and winding up by decree of court.

The limited partner shall also have the right to receive a share of the profits or other compensation by way of income and to the return of his contribution as provided under certain conditions. (G.S. 59-10)

The act further sets forth that a limited partner's interest in the partnership is personal property. (G.S. 59-18)

The law further provides that the surname of a limited partner shall not appear in the partnership name unless it is also the surname of a general partner, or that prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared. It is also provided that if a limited partner's name appears in a partnership name contrary to the provisions of the act, he is liable as a general partner to the partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. (G. S. 59-5)

It is well to call to the attention of the field representatives that one significant characteristic of the limited partner is that he does not have any right to manage, control, or bind the partnership. These functions are those processed by a general partner. If a limited partner is performing service for remuneration, he is in employment and is an employee.

There are other indicia relating to the creation of limited partnership. It is felt, however, that the above information may be of some benefit in determining whether a particular relationship is that of a limited partnership. These are the types of cases which are very difficult in some instances to determine. It is suggested, therefore, in all cases where there is any doubt as to the existence of a limited partnership that the facts be assembled and forwarded along with any written contracts to the central office. We then can give the field representatives the benefit of our thinking as to whether there is a limited partnership involved.

Adopted as an official Interpretation of the Commission on February 11, 1964.