

April 3, 1962

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Honorable John E. Downs
Senator, 34th District
510 Corby Building
St. Joseph, Missouri

Dear Senator Downs:

You recently requested the opinion of this office
as follows:

"Would you be so kind as to give me your
opinion concerning stock issued by a not-
for-profit corporation organized under the
Missouri Not-For-Profit Corporation Act
of 1953?

"The Act seems to clearly indicate that
not-for-profit corporations cannot issue
stock, and therefore, would you give me
your opinion as to whether or not these
certificates of stock issued by the
corporation would be mere evidence of
membership, and, if so, could the Board
of Directors at a meeting, or at a
meeting of all the shareholders or
members, could these stock certificates
be withdrawn or membership canceled for
failure to pay dues or assessments?"

Subsequently, you furnished us with additional specific
information concerning the corporation involved. The Articles
of Incorporation make no reference to shares or certificates
of stock, nor do they contain any provisions respecting

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classification of members or the qualifications and rights of any such class. The By-Laws contain a number of provisions referring to "certificates of stock" and to "stockholders". Article IV provides that "membership in the corporation shall be evidenced by a certificate of stock issued to the purchaser for the sum of One Hundred Dollars." Article V provides for "transfer of stock". Articles XII, XV and XVI refer to "certificates of stock". Article VI, VII, VIII, IX, XVIII and XIX have application to stockholders meetings.

The stock certificate itself is in the usual form of stock certificates of corporations which are organized under the General and Business Corporation Law of Missouri, except that no reference is made therein to any par or no par value nor to any amount of authorized capital stock.

Section 355.030, RSMo 1959, contains the express mandate that a corporation organized under, or which has accepted the provisions of The General Not-for-Profit Law "shall not have or issue shares of stock". This explicit statutory provision of itself would operate to invalidate every share of stock issued by a not-for-profit corporation.

It is to be noted that Section 355.105, RSMo 1959, provides that such corporation "may issue certificates evidencing membership therein". Article IV of the By-Laws above noted (stating that "membership in the corporation shall be evidenced by a certificate of stock") would indicate that the intention is simply that the "stock" certificates constitute no more than the "certificate evidencing membership" which is authorized by Section 355.105. However, the use of the words "stock" and "share" in connection therewith is unauthorized by law and void, although such fact does not of itself necessarily invalidate the "certificate" to the extent that the corporation could not replace it with a valid one in conformity with the intention.

The law "will not presume that the parties intended to do an illegal and unlawful act". (Allstate Ins. Co. v. Hartford Accident & Ind. Co., Mo. App., 311 SW2d 41, 47). On the contrary the presumption is that the parties intended to act honestly and rightfully (Bradshaw v. Metropolitan Life Ins. Co., Mo. App., 110 SW2d 834, 837; State ex rel Kugler v.

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Tillotson, Mo. Sup., 312 SW2d 753, 757). We note that the By-Laws (Article IX) provide that each shareholder is entitled to one vote, and that no provision is made therein for the payment of any dividends, which would reinforce our view that the parties intended that the "stock" certificates be no more than "certificates evidencing membership". The reference in Article IV to a "purchase" price of \$100 may be considered as the equivalent of an initiation charge for membership.

Under the circumstances, we would suggest that all the "stock" certificates purporting to evidence "shares" in the corporation be immediately withdrawn or cancelled and replaced by true certificates of membership. So too, we suggest that all references to stock, certificates of stock, and stockholders meetings be deleted from the By-Laws.

Your inquiry also relates to the effect of a failure on the part of a member to pay dues or assessments. Section 355.105 RSMo 1959, provides in part that not-for-profit corporations may have one or more classes of members, and that the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the by-laws. In the case of the corporation concerning which you inquire, the Articles of Incorporation are silent on this subject. The By-Laws contain provisions for two classes of members, one class being those who have "purchased" stock certificates and the other class being designated as "associate members". The latter have no voting privileges.

We believe that the by-laws of such corporation may make provision for reasonable annual dues or assessments and specify the consequences of non-payment. With respect to voting members, Article XIX of the By-Laws limits the annual assessment to a maximum of \$20.00 unless such amount is increased by a majority vote of the members present at a special or annual meeting. Article XIV provides that members shall pay assessments within three months of the date of levy and that upon making such payment shall be issued a membership card for the ensuing year. This card merely evidences that the member in question is in good standing for the current year.

You inquire whether the Board of Directors or the stockholders at a meeting may "cancel" membership or "withdraw" a stock certificate for failure to pay dues or assessments.

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We find no provision either in the Articles of Incorporation or the By-Laws which would authorize such a procedure. Article XIV of the By-Laws provides that if a member fails to pay his assessment within three months, he "shall be denied access to the property of the corporation and to all the privileges of a member of the corporation." This Article, in essence, provides only for a suspension of the privileges of membership, and not for an expulsion or revocation of membership in the event of failure to pay an annual assessment. We note that Article XII of the By-Laws authorizes the Board of Directors, by unanimous agreement, to "expel any member whose conduct it deem unbecoming and detrimental to the corporation, and shall refund to any such expelled member the price of his share of stock." This Article clearly has no reference to a mere failure to pay dues or assessments, and in our opinion would not authorize a cancellation or revocation of a membership based solely on failure to pay an annual assessment.

The foregoing opinion is obviously limited to the specific facts submitted with reference to the not-for-profit corporation concerning which you make inquiry. In situations of this kind, a change in the factual situation might well result in different conclusions. We desire to emphasize, however, the fact that under the applicable statutes no corporation organized as a not-for-profit corporation may legally issue shares of stock.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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