

CORPORATE DIRECTORS: In all elections for the Board of Directors, voting shareholders are entitled to vote cumulatively for all directors to be elected and the Articles of Incorporation (or amendments), may not limit such voters to the election of only a certain number of directors.

CUMULATIVE VOTING:

OPINION NO. 238

August 24, 1964

FILED
238

Mr. Paul A. Slicer, Jr.
Corporation Counsel
Office of Secretary of State
Jefferson City, Missouri

Dear Mr. Slicer:

Your official opinion request of June 19, 1964, raises the following question relating to a corporation organized under the provisions of Chapter 351, RSMo.

May the Articles of Incorporation (or amendments) provide that each of two classes of voting stock shall elect one-half of the directors of a six-member board of directors, regardless of the number of voting shares in each class of stock?

Article XI, Section 6 of the Missouri Constitution provides:

"In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares held by him, multiplied by the number of directors or managers to be elected, and may cast the whole number of votes, either in person or proxy for one candidate, or distribute such votes among two or more candidates; and such directors or managers shall not be elected in any other manner; provided, that this section shall not apply to co-operative associations, societies or exchanges organized under the law."

Section 351.245, RSMo 1959, has substantially similar provisions. The shareholders right to "distribute such votes

among two or more candidates" clearly means that each voting shareholder has a right to vote cumulatively for any or all directors to be elected and to have those votes counted.

The placing of limitations on the number of directors a class of stock may elect would completely ignore the number of votes within that class of stock and prevent the distribution of such votes as each shareholder desired. This is contrary to Article XI, Section 6 of the Constitution of Missouri, which clearly provides that shareholders may vote for all directors to be elected. In addition, the shareholders of a particular class might thereby be given voting power disproportionate to the number of votes to which such shareholders are entitled under the Constitution. On the other hand, the shareholders might be precluded from exercising their full voting power under the Constitution by not having their votes counted cumulatively towards the election of all directors. Under the Constitution, shareholders entitled to vote do so as shareholders of the corporation and not as members of a particular class of stock. Therefore, we are of the opinion that the Articles of Incorporation (or amendments), which would arbitrarily limit the voting rights of a particular class of voting stock to the election of one-half of the directors is inconsistent with our constitutional provision of cumulative voting.

CONCLUSION

In all elections for the Board of Directors of a corporation organized under the provisions of Chapter 351, RSMo., the voting shareholders are entitled to vote cumulatively for all directors to be elected and the Articles of Incorporation (or amendments) may not limit such voters to the elections of only a certain number of directors.

The foregoing opinion which I hereby approve was prepared by my Assistant, C. B. Burns, Jr.

Very truly yours,


THOMAS F. EAGLETON
Attorney General