

OPINION
59-41

October 9, 1959 (OPINION)

CORPORATIONS

RE: Transfer of Real Estate - Validity of Deed

This is in reply to your letter of 30 September 1959 in regard to the nonprofit corporation called the McIntosh County Fair Association.

You inform us that the corporation was organized in 1936 or 1937. Bylaws of the corporation provide for an annual meeting of the stockholders to be held on the first Tuesday of October of each year. Apparently only one of the annual meetings was held on the first Tuesday of October. Several annual meetings were held thereafter but none has been held for the past several years. The corporation itself has not been active for the last ten years or so and no fairs have been held for that length of time.

Real property owned by the corporation is being considered as a possible school site. In 1956 a special meeting was called pursuant to provisions of the bylaws and about twenty-five out of the thirty members present voted that a portion of the land owned by the Association should be conveyed to the city or the park district of the city. Under the bylaws there was not a quorum present at the meeting sufficient for the transaction of business. At none of the meetings was there a quorum present as defined in the bylaws, the meetings apparently being conducted on the basis that any number was a quorum and the majority of members present and voting determined any issue that arose. No deed was drawn immediately after said 1956 meeting. However, on the basis of agreement between the city and the park board the park board took possession, expended moneys on improvements and maintenance of the area and eventually the Fair Board did convey to the park board. Now the park board has apparently conveyed the premises to the special school district for a consideration of one thousand dollars.

Recently one of the stockholders of the Association saw the Secretary and demanded that he give notice of the holding of the annual meeting on the first Tuesday in October as provided in the bylaws. The Secretary refused to do so. Three members of the nine-member Board of Directors then sent out notices of the holding of such annual meeting on the first Tuesday in October. Such notices specify that the three members giving the notices are part of the Executive Committee. You inform us that these individuals are members of the Board of Directors but hold no other offices within the corporation. The Executive Committee as specified in the bylaws state that the Executive Committee shall consist of the President, Vice President, Secretary and Treasurer.

You apparently wish our opinion on whether the deed given by the Fair Association as outlined above is valid, whether the meeting called as of the sixth of October is valid, and whether this Fair Association would now come under the "Nonprofit Corporation Act" adopted in 1959

by Chapter 111 of the 1959 Session Laws. Further you suggest that it is not necessary that members or stockholders act on business affairs of the Association, and that the conveyance of lands and other business is to be handled and conducted by the Executive Committee and Board of Directors.

First, it would appear that under the facts you have given the new "Nonprofit Corporation Act" would not apply to this situation at the present time. SEE: Section 10-2818 of said Chapter 111 of the 1959 Session Laws. However, under that section it would appear that the corporation may elect to become subject to its provisions by adoption of a resolution of the governing body and filing a copy thereof with the Secretary of State at any time. In the absence of the corporation's electing to come within the provision of the new act it would appear under said section 10-2818 of said Chapter 111 of the 1959 Session Laws Chapters 10-08, 10-09, 10-10 and 10-11 of the North Dakota Revised Code of 1943 are still in effect. Note also chapter 4-02 of the North Dakota Revised Code of 1943.

We have not as yet had opportunity to examine the deed executed, the bylaws, articles of incorporation, minutes, etc. of the corporation to date. However, we will attempt to answer your other questions on the basis of the information given.

Section 10-0702 of the North Dakota Revised Code of 1943 does provide insofar as here applicable that:

In the absence of any provision in the bylaws regulating the execution and acknowledgment of conveyances, transfers, assignments, releases, satisfactions, or other instruments affecting liens upon, titles to, or interests in real estate, the president or secretary of any corporation may execute and acknowledge such instruments on its behalf when authorized so to do by a resolution of the board of directors. * * * *

Such an instrument when executed, of course, might be attacked on various grounds.

For example from the information you give it might be questionable whether there is or has been a duly elected and validly acting board of directors of the corporation, or further whether the acting executive committee members were ever elected to the respective offices they hold. Also, of course, it is possible that the sale of the site here concerned might constitute the sale of all or substantially all the property and assets of the corporation other than in its usual and regular course of business (SEE: sections 76 and 77 of Chapter 102 of the 1957 Session Laws and section 10-0530 of the North Dakota Revised Code of 1943, since repealed by said Chapter 102) wherein it would be necessary to have the assent of the stockholders of the corporation. Note, however, the provisions of section 10-0806 of the North Dakota Revised Code of 1943 authorizing religious, educational and benevolent corporations to sell property held or owned by it upon a majority vote of its members at a meeting called for that purpose.

We note at 13 Am. Jur. 518, Corporations, Section 476 of the general statement that:

Common-law principles are generally held to require a notice of corporate meetings to be given to the shareholders. It has been suggested, however, that where the meeting is a general or stated one, provided for in some resolution or bylaw, notice of the time and place of the meeting is, perhaps, in the absence of a different provision in the charter or bylaws of the company, not necessary. * * * *"

We note also that generally stockholders may waive formal notice of a meeting either in writing or by participating in the meeting without objecting to the manner of giving notice (SEE 13 Am. Jur. 519, Corporations, Section 479).

From the information you have given it would appear that the meeting held on the sixth of October was a meeting provided for and required by a provision of the bylaws of the corporation which specifically prescribed the time and place of such meeting. On such basis even though the secretary did not send to each member written notice of the meeting not less than ten nor more than fifteen days before the meeting, it is our opinion that if a meeting was actually held, attended by a sufficient number of the members the actions taken thereat would not necessarily be invalidated by the failure to specifically give notice in the manner prescribed by the bylaws.

Assuming that it would be possible to hold a corporate meeting, pursuant to proper notice in accordance with the appropriate provisions of the bylaws at which a majority of the members of the corporation would attend, at which meeting elections of officers and directors (where there may be doubt as to the validity of same) could be validated, and at which the membership would assent to action to be taken by the board of directors and officers, such a meeting would appear to be the best solution to the problem. However, considering the facts you give as to the length of time the corporation has been inactive, the confusion that has apparently arisen as to the manner and method of holding corporate meetings, etc., it seems rather doubtful that it would be possible to adopt this solution. On that basis, we are inclined to agree with your thought that the best available solution to the problem is to have the school district take the site by eminent domain proceedings.

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