

# MAINE STATE LEGISLATURE

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Doris Hayes, Supervisor  
George C. West, Deputy

Corporation Div. - Sec. of State  
Attorney General

SYLLABUS:

In preparing the Articles of Incorporation the minimum number of directors should be the same as the number of directors constituting the initial board.

FACTS:

A problem has arisen in the preparation of Articles of Incorporation. Many attorneys check the box in THIRD a. and list the number of directors as 1. They give the name and address of the single director. They then go to FOURTH and check the box which authorizes the board of directors to increase or decrease the number of directors. They next state the minimum number to be 3 and the maximum any given number.

QUESTION:

When the number of directors is initially listed as one, is it legal to also list the minimum number of directors as three?

ANSWER:

No.

REASONS:

The problem arises because attorneys cannot seem to divorce themselves from their habit of having directors running small or close corporations. If the attorneys would forget about directors and proceed with a close corporation, having shareholders performing the directors' functions, the problem would virtually disappear. However, attorneys being attorneys, they will continue in the same rut. We must then point out the error they are falling into. 13-A M.R.S.A. § 703, sub-§ 1, Para. A, states:

"The number of directors of a corporation having a board of directors shall be not less than 3, except that if all shares of a corporation are owned beneficially and of record by fewer than 3 shareholders, the number of directors

may be less than 3 but not less than the number of shareholders. The articles of incorporation shall fix the number of directors comprising the initial board of directors. The number so stated in the articles shall constitute the authorized number of directors unless and until changed as provided in subsection 2."

The meaning of this paragraph A is that the minimum number of directors is 3, provided there are at least 3 shareholders. When there are less than 3 shareholders, the number of directors may be less than 3 but not less than the number of stockholders. Hence, one stockholder one director; two stockholders two directors; three or more stockholders three directors.

It would appear to be inconsistent to say that one director constitutes the initial board and at the same time state the minimum number as three. The proper interpretation of § 703 sub-§ 1 Para. A, is that a corporation cannot have three directors unless it has three or more stockholders. To be correct, the minimum number of directors in FOURTH should be the number listed in THIRD a.

George C. West  
Deputy Attorney General

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