

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

STATE OF MAINE

80-26

Inter-Departmental Memorandum Date February 5, 1980To James Henderson, DeputyDept. Secretary of StateFrom Steven Wright, AssistantDept. Attorney GeneralSubject Effect of failure to file with Secretary of State on nonprofit corporation's existence

This is in response to your oral request for the opinion of the Attorney General on whether a corporation which was organized after 1911, but which has not filed any articles of incorporation with the Secretary of State, ever obtained a valid corporate existence. Specifically, you have asked whether the Bangor Symphony Orchestra, inter alia, which has had its corporate certificate examined by the Attorney General, certified by him to be properly drawn, signed and conformable to the Constitution and laws of this State, and properly recorded in the registry of deeds, but which has neglected to file a certified copy of that certificate in the office of the Secretary of State within 60 days after the day of the organizational meeting is a validly organized Maine corporation. We answer in the affirmative.

The statute under which the Bangor Symphony sought to organize in 1912 required a number of specific steps to be taken to establish a nonprofit corporation. 1916 MRS c. 62, §§1-4. Briefly, these provisions required:

1. Seven or more persons desire to be incorporated for any literary, scientific, musical, charitable... purpose may apply in writing ... to a justice of the peace in the county, who may issue a warrant directing one of the applicants to call a meeting at an appointed time and place. 1916 MRS c. 62, §1.
2. The applicant directed to call the meeting gives notice of the meeting as required by 1916 MRS c. 62, §2.
3. When assembled pursuant to the warrant, the applicants may organize themselves into a corporation, adopt a name, elect officers, adopt by-laws. 1916 MRS c. 62, §3.
4. "Before commencing business the president, treasurer and a majority of directors or trustees...shall prepare a certificate setting forth the name and purposes of the corporation, the town where located, the number and names of the officers, and shall sign and make oath to it;" 1916 MRS c. 62, §4

5. This certificate must then be examined by the Attorney General and certified by him to conform to the constitution and laws of the State. 1916 MRS c. 62, §4.
6. This certificate is then to be recorded in the registry of deeds in the county where the corporation is located. 1916 MRS c. 62, §4.
7. Finally, within 60 days of the organizational meeting, the certificate is to be filed in the Secretary of State's Office. 1916 MRS c. 62, §4.

The only step left uncompleted by the Bangor Symphony was the last. They apparently failed to file a duly certified copy of the certificate with the Secretary of State. We conclude that the failure to so file did not and does not render the corporation nonexistent.

Having completed all of the requisite organizational steps to bring about its corporate existence, the Bangor Symphony substantially complied with the law in effect at the time of its inception. Having had its certificate examined and approved by Assistant Attorney General Franklin Fisher on December 18, 1919 and having had that certificate properly filed in the Penobscot County Registry of Deeds, the Bangor Symphony had satisfied substantially the requirements of the law.

The construction of the statute which existed at the time of the organization of this corporation supports our conclusion of its existence. 1916 MRS c. 62, §3 provided that

When assembled pursuant to the warrant, they may organize themselves into a corporation, adopt a corporate name, and they, their associate and successors may have continual succession; have a common seal; elect all necessary officers; adopt by-laws, not inconsistent with law, and enforce the same by suitable penalties; have the same rights and be under the same liabilities, as other corporations, in prosecuting and defending suits at law; and enjoy all other rights, privileges and immunities, of a legal corporation. (emphasis added).

This language clearly implied that a nonstock, i.e. nonprofit, corporation assumed its corporate liabilities and enjoyed its corporate privileges at its initial organizational meeting. Assuming it obtained the approval by the Attorney General of its certificate, the subsequent filing requirements seem to then serve the purpose of simply notifying the public of the new corporation's existence. 1916 MRS Chap 62, §4 did state that the approval of the Attorney General and the filings of the certificate be made "[b]efore commencing business".


However, as previously indicated, substantial compliance with these steps is sufficient to permit the corporation at least de facto existence.

It is important to note in this regard the differences in the statutes which then controlled the organization of corporations with stock, i.e. for profit, and nonstock corporations. 1916 MRS c. 51, §8 contained no language empowering the corporation to act as such at or after the organizational meeting. On the contrary, the for profit corporation was not deemed to be completely organized until its certificate had been properly filed. 1916 MRS c. 51, §11 as is then existed provided:

Sec. II. Upon filing certificate organization complete. 1916 MRS c. 47, §10. From the time of filing the copy of such certificate in the Secretary of State's office, the signers of said articles and their successors and assigns shall be a corporation, the same as if incorporated by a special act, with all the rights and powers, and subject to all the duties, obligations and liabilities provided by this chapter.

The omission or exclusion of a section corresponding to the above-cited provision in the law governing nonstock or nonprofit corporations is additional evidence of the legislature's intent that filing of the certificate in the Secretary of State's office was not a condition precedent to the corporate existence of a nonprofit corporation.

Because of the foregoing, it is our conclusion that the Bangor Symphony's failure to file its certificate of organization with the Secretary of State within 60 days of its organizational meeting was not and is not fatal to its corporate existence.


STEVEN F. WRIGHT
Assistant Attorney General