

MAINE STATE LEGISLATURE

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SEVENTY-FIFTH LEGISLATURE

SENATE

NO. 110

In Senate, Feb. 16, 1911.

Presented by Mr. Gorwell of York and on motion by Mr. Gorwell laid on the table for printing pending reference to a committee.

W. C. HANSON, Secretary.

STATE OF MAINE

To the Legislature of the State of Maine:

Pursuant to a joint order of the seventy-fourth legislature the undersigned were appointed a committee "to consider the advisability of changing the present laws relating to the organization of corporations in this state, and report to the next legislature by bill or otherwise."

By the terms of the legislative order our inquiry has been limited to the formation of corporations, but we have necessarily considered legislation for the subsequent conduct and regulation of corporate enterprises, the subjects being closely related.

The following schedule shows the number of business corporations organized in Maine during the five years from 1906 to 1910, inclusive, with the amount received by the state from the fees of incorporation:

Year.	No. Organized.	Amount Collected.
1906	1045	\$153,355 00
1907	1028	135,782 50
1908	867	77,682 50
1909	921	79,502 50
1910	645	64,411 00

In addition to the sums paid directly to the State Treas-

urer, as shown in the foregoing table, the state has also received ten dollars from each corporation organized during this period for the approval of its certificate by the Attorney General and filing the same in the office of the Secretary of State and five dollars has been paid to the several counties for each certificate filed in the registry of deeds.

The state has also received from the annual franchise taxes on corporations created under its laws, in addition to the fees of organization, the following sums:

Year.	Amount.
1906	\$87,465 00
1907	145,315 00
1908	156,955 00
1909	194,587 35
1910	188,325 00

The total revenue obtained by the state from the formation and taxation of franchises of mercantile and manufacturing corporations in 1910 is more than two-thirds of a mill on the entire valuation of the state.

It has been impossible for the committee to determine exactly what proportion of these corporations are organized by our own citizens for the conduct of a purely local business within the state and what proportion by citizens of other states for the conduct of business elsewhere.

For convenience three or more citizens of Maine, usually connected with one of the larger law offices, frequently act as incorporators, the corporation being turned over to other parties as soon as its organization is completed. For this reason an inspection of the record of certificates of organization does not disclose the proportion of corporations of foreign and domestic control, but from the best information and advice which we can obtain it is our judgment that about twenty or twenty-five per cent. of all the corporations organized annually in this state are formed by citizens of Maine and the remainder, or fully seventy-five per cent. of the whole number, are organized by persons outside of Maine for the conduct of business chiefly or wholly in other states.

Residents of other states are influenced to obtain their corporate franchises here because of the ease and simplicity

of our forms of incorporation and the absence of many restrictions imposed by the laws of other jurisdictions. A considerable number of responsible corporations are also organized in this state to gain certain advantages which may arise from diverse citizenship, including the right, if occasion arises, to have their causes adjudicated in United States Courts.

We have carefully examined the corporation laws of more than thirty states and from a comparison of these laws with our own we believe that the principal advantages, privileges and exemptions afforded by the laws of Maine and which have proven attractive to the citizens of other states are the following.

(1) The form of incorporation is more simple and the fees and franchise taxes are lower than in other states.

(2) No part of the capital stock is required to be paid in at organization.

(3) Full paid stock may be issued for property or services without public record and the holder of such stock is relieved of any liability thereon, except in case of actual fraud.

(4) Debts may be incurred to any amount.

(5) As many different purposes may be inserted in certificate of organization as desired.

(6) Stock of other corporations may be held and voted.

(7) Corporations are not required to file statements of financial condition or names of stockholders.

For the most part these corporations are organized for the more efficient and convenient conduct of mercantile and manufacturing pursuits and are engaged in legitimate trade. A few, and fortunately a small percentage of the whole, are formed from dishonest motives and with a design to secure investors in mining, oil and similar enterprises of doubtful or speculative value, the larger part of the money obtained in this way, and usually all of it, being used for salaries and profits of the promoters.

We believe that the proportion of corporations of the latter class is gradually diminishing and that there has been a gradual though marked improvement in the character of corporations organized in Maine in recent years. We have studied the situation with care and with a desire to recommend such

legislation as will eliminate altogether the latter class of corporations without disturbing the free and convenient organization of legitimate business enterprises. With this end in view we have considered many proposed changes in our laws which conform to the provisions in some other states having more rigid requirements and submit our conclusions.

FEES AND TAXES.

The expense of organizing a corporation in Maine is less and the annual franchise tax is lower than in any other conservative state and these considerations have attracted much of the corporation business from the larger commercial states of the East. We do not recommend any change in these fees or in the rate of taxation.

The income of the state from this source would be less if the fees were increased because of the smaller number of corporations which would be organized under our laws and an increase of fees, while reducing the total number of new corporations, would not necessarily deter the formation of dishonest or undesirable concerns. A reduction of fees would be construed as an invitation by the state for the wholesale organization of corporations within its borders and should not be considered. An increase in the rate of taxation of corporate franchises would indicate an instability and lack of fixed policy on the part of the state in the treatment of its corporations. We believe, moreover, that the present scale of fees and rate of taxation is reasonable and commensurate with the value of the franchise conferred.

CAPITAL STOCK.

We have been asked to recommend a requirement that ten per cent. of the par value of the capital stock shall be paid in at the time of organization. While permission to organize without paid-in capital may in some cases assist fraud or misrepresentation it would prove an unnecessary hardship to many legitimate enterprises. A large percentage of our corporations are organized for a later acquisition and development of patent rights and other properties where no advance payment of capital is needed. Moreover, the promoters of a corporation or-

ganized for speculative purposes or with a fraudulent design might easily arrange an advance payment for stock, such payment being later returned to them as salaries, commissions and other similar charges.

We do not think the benefits from the proposed requirement would warrant its adoption.

REPORTS TO STOCKHOLDERS.

We think some further legislation is advisable to insure more adequate reports to stockholders. The clerks of corporations organized under our laws, but which are controlled outside of the state, complain that they are continually receiving inquiries from stockholders regarding the business, finances and success or failure of the corporation as a business proposition. In such cases the clerks usually are forced to reply that they are merely clerical officers required by the statutes of the state and are unable to furnish any part of the information desired.

There should be some provision in our statutes requiring an annual report from the directors to the stockholders which should furnish a thorough and detailed statement of the financial condition of the company. The report should include the funds belonging to the corporation; all debts due to it, distinguishing such as the directors deem to be good from those in doubt; details as to bills and liabilities; the amount of the capital paid in, and the proportion which has been paid in money and what proportion in property or services; the estimated surplus or deficiency as the case may be; the amount of dividends and losses or profits during the preceding year, as well as a summarized statement of all salaries paid by it during that time.

A penalty should be attached for fraudulent misrepresentation.

ISSUANCE OF STOCK.

By Section fifty of Chapter forty-seven of the Revised Statutes, enacted by the legislature of 1901, a corporation may purchase mines, manufactures or other property necessary for its business or the stock of other corporations owning similar

property and issue its stock in payment thereof and may likewise issue its stock for services rendered, the judgment of its directors as to the value of such property or services being conclusive in the absence of actual fraud.

We have been strongly urged to recommend an amendment of this Section by including a requirement that whenever any stock is issued for property or services a statement under oath, verified by the President and Secretary of the corporation, shall be filed with the Secretary of State accurately describing such property or services, the valuation at which the same is taken or received by the corporation and the judgment of the directors as to the value of such property or services.

Such a provision, it is contended, would prevent the inflation of capital through the acquisition of property at an excessive valuation and would insure that stock was issued under proper safeguards. It is also claimed that this requirement would afford to every prospective investor in the stock of a Maine corporation an opportunity to determine from the public records or files a description and valuation of the property in which his money would be invested and the state would then be relieved of any moral responsibility for the inflation of capital of any corporation created under its laws.

We have been much impressed by these considerations and have given this subject prolonged and careful thought. But from our inquiry into the practical results of similar laws in other states it is our conclusion that the proposed requirements would not accomplish its intended purpose. Its advantages would be more theoretical than practical, and more apparent than real. In practice it would seldom reach the persons for whose protection it was intended. It would, moreover, be susceptible of simple and easy evasion. For illustration, stock may be subscribed and paid for in cash or by check or other evidence of credit and this payment may be returned later to the subscriber, for property or services contributed. In such a case it would not appear from the certificate or statement filed with the Secretary of State that any stock had been issued except for money or evidence of credit. The proposed requirement, therefore, might promote, rather than prevent, deception. Of course, resort could be had to the court for

relief in cases of proven evasion or fraud, but such relief would be extended under existing law. Many responsible private corporations would object to the publicity required by such a law and would seek a domicile under another jurisdiction. It would also prove an embarrassing and useless requirement for many business corporations to whose stock the public would not be invited or expected to subscribe.

It is our judgment that the promotion of undesirable corporations seeking to attract investors in worthless properties, the inflation or "watering" of capital and other evils and abuses of corporate management of which the public justly complain can be effectually prevented only through a direct supervision by the state of the issuance of stock and other corporate securities. Such supervision would be exercised through some board or commission, not now in existence, to whom the power could be safely intrusted. The commission would determine the value of all properties or services for which a corporation proposed to issue its stock, the amount of stock to be limited by the valuation of the assets of the corporation as thus determined, and the issuance of stock to be subject in all cases to the approval of the commission. An example of such supervision is afforded by the statutes of Rhode Island.

By the adoption of similar legislation in Maine the name of the State upon any certificate of stock hereafter issued would be a guaranty that the stock was issued under the most stringent safe-guards. In all probability, however, it would drive to the cover of other states fully three-fourths of all the corporations now annually organized in Maine. It means also a radical change in the entire policy of the State in its treatment of corporate enterprises. Unless the State is prepared to make such a change in its attitude towards corporations no changes in statutes, except in minor particulars, should be attempted. Whether such a radical change of policy is desired or desirable is for the legislature in its wisdom to determine. In the meantime we believe that substantial changes in legislation are inexpedient and that reliance should be placed in our Supreme Judicial Court, which has ample equity jurisdiction and which has shown its readiness in recent decisions to afford relief in

cases of fraudulent inflation of capital and other abuses of corporate management.

BY-LAWS.

Persons having business dealings with corporations frequently need to know how a corporation is organized and what officers are authorized under its by-laws to conclude contracts and other business transactions in its behalf. We accordingly recommend that a copy of the by-laws of each and every corporation be filed with the Secretary of State at the time of their adoption and that notice of any changes in such by-laws be included in the annual returns filed by such corporations with the Secretary of State. This would follow the provisions of the law of Massachusetts in this respect and which has proven of great convenience in that State.

INCORPORATED SOCIETIES.

Under the provisions of chapter fifty-seven of the Revised Statutes seven or more persons may become incorporated as a society for charitable, benevolent, social, musical, literary or similar purposes and such a society is authorized to own real estate to the amount of one hundred thousand dollars. In our judgment the present statutes for the incorporation of such societies do not sufficiently insure the validity of real estate titles.

After the meeting of the associates for organization a certificate is filed with the Secretary of State, but no approval of such certificate by the Attorney General, as in the case of business corporations, is required. To insure the regularity of the proceedings and that the certificate is properly signed and drawn conformably to the laws of the State, we think that such approval should be obtained before the certificate is filed, but the usual fee of the Attorney General might be omitted. Before filing the certificate with the Secretary of State it should be recorded in the Registry of Deeds in the county where the society is located.

CONCLUSION.

The corporation has been an important factor in the development of the resources of the State and nation and is an essential element in our commercial and industrial life. The incorporation laws of every State should be simple and easy, free from unnecessary formalities and should follow a definite, stable and clearly established policy. For this reason frequent changes in laws, requiring oftentimes new interpretations by the courts, should not be encouraged. The fundamental policy of the State in the treatment of its corporations should first be established by the legislature before important statutory changes are considered.

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