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WHAT ARE IMPROPER CORPORATE PURPOSES FOR NONPROFIT CORPORATIONS?

WILLIAM H. WOOD*

Prior to the adoption of the Pennsylvania Nonprofit Corporation Law of 1933, nonprofit corporations, or corporations of the first-class, could be formed for only a single purpose. Furthermore, the permissible single purpose was restricted to one of the fifteen purposes enumerated in the corporation legislation of 1874. The Legislature apparently recognized that this limitation detracted considerably from the desirability and utility of nonprofit corporations, for in Sec. 201 of the Nonprofit Corporation Law, it is provided that such corporations may be formed "for any purpose or purposes which are lawful and not injurious to the community." This same provision is reflected in Section 207, which provides that applications for corporate charters shall be passed upon by the various courts of common pleas and that incorporation shall be refused unless it appears that the "purpose or purposes" specified in the proposed articles of incorporation are "lawful and not injurious to the community."

Accordingly, the only limitation now imposed upon the purposes of nonprofit corporations arises under the legislative requirement that such purposes shall be "lawful and not injurious to the community." This is not a new concept in Pennsylvania corporation legislation for, under Sec. 3 of the Act of 1874, a charter could not be granted to a nonprofit corporation unless the corporate purpose was within one of the classes specified in that act, and unless it was "lawful and not injurious to the community."

This requirement is a flexible one, as it should be if nonprofit corporations are to attain their maximum utility. However, an examination of the numerous decisions, both under the Act of 1874 and the Nonprofit Corporation Law, pertaining to the phrase "lawful and not injurious to the community" reveals a disconcerting lack of agreement as to its proper construction. A consideration

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1 P. L. 289, 15 PURD. STATS. (Pa.) 2851.
2 P. L. 73, as amended.
3 15 PURD. STATS. (Pa.) 2851-201.
4 15 PURD. STATS. (Pa.) 2851-207.
5 P. L. 73.
of these decisions reveals that the courts have been somewhat overzealous in refusing applications for non-profit corporate charters.

It will be noted that the great majority of decisions involving this question are ones in which the court ruled that the corporate purpose under consideration was unlawful or injurious to the Commonwealth. Thus, there are numerous examples of improper corporate purposes, but very few reported expressions of opinion as to permissible corporate purposes. This can probably be explained by the fact that courts are not so likely to write an opinion if the application for a charter is approved, nor would such opinion, if written, ordinarily be of such general interest as to justify its inclusion in the Pennsylvania District or District and County reports. Nevertheless, it is possible to gain from the available decisions some general ideas as to the type of corporate purposes which are likely to be unacceptable to the courts.

As has been indicated, the key terms in the legislative restriction upon the purposes of nonprofit corporations are "lawful," "not injurious" and "community."

"Lawful"

By "lawful" the statute contemplates corporate objectives which do not contravene any provision or principle of either common or statutory law.

Because of this requirement, a charter has been refused to a nonprofit corporation on the ground that the proposed corporation was a mere device to evade the liquor laws through the instrumentality of an alleged social club. 6

A charter has also been refused for the reason that the real purpose of the proposed corporation was to secure pecuniary profit for its members, which is, of course, contrary to the laws governing nonprofit corporations. 7 It should be noted, however, that an incidental profit to the members of a nonprofit corporation is not objectionable. 8

A charter was refused In re Electropathic Institute 9 on the ground that to charter an organization whose members professed to be able to cure disease by electrical waves would be to contravene the statutes restricting the practice of medicine to those possessing higher qualifications. 10

In Chiropractor's Ass'n. of Pa. 11 a charter was refused on the ground that chiropractors had not yet attained a defined legal status.

7Hebeler's Appeal, 296 Pa. 431, 146 Atl. 26 (1929).
919 Phila. 128 (C. P. 1880).
10See also In re American Electropathic Institute's Application, 14 Phila. 128, 37 Leg. Int. 262 (C. P. 1889).
11243 Pa. 347, 90 Atl. 335 (1914).
"NOT INJURIOUS"

The proper meaning of the words "not injurious" is less definite. These words may be deemed to involve a considerable variety of elements, depending in large measure upon the social consciousness of the particular judge before whom an application for a corporate charter is pending. In this connection it is to be noted that Sections 201 and 207 of the Nonprofit Corporation Law are phrased in the negative rather than the affirmative, in that they require corporate purposes to be "not injurious" to the community. This is obviously much less exacting than would be a requirement that corporate purposes be beneficial to the community. Little more can be said than that a corporate purpose may be considered injurious if it is fairly apparent, under all the circumstances which may be expected to surround the operations of the proposed corporation, that the public moral, physical, social, economic, or cultural well-being of the public will be materially prejudiced if the desired corporation is granted a charter.12

In First Church of Christ Scientist13 the master to whom the application for a charter had been referred reached the conclusion that it would be injurious to the community to incorporate a group of citizens who would teach the doctrine that there is no such thing as a contagious disease, or any disease, and practice the art of curing by prayer those afflictions which are called contagious diseases. The lower court approved this recommendation of the master and it was affirmed by the Supreme Court.14

In Russian American Guard's Charter,15 the court held it would be "inexpedient" to grant a charter, because it was apparent that the proposed organization would be comprised of natives of Russia for the purpose of organization, drill and discipline as a military company. The court indicated that the state statutes furnished ample facilities for such purposes.16

In Chinese Club,17 a charter was refused to a Chinese social club on the ground that there was great danger that the organization might be perverted to purposes injurious to the community, apparently because the entire board of directors and twelve of the fifteen subscribers were Chinamen.

In In re Hill Top Club's Application for Incorporation,18 the court ruled that the establishment of a country club for colored persons is not "injurious to the community" even though neighboring real estate values would be depreciated.

12See Application of the First Church of Christ Scientist, 6 Pa. Dist. 745 (C. P. 1897).
13205 Pa. 534, 55 Atl. 184 (1903).
14See Application of the First Church of Christ Scientist, 6 Pa. Dist. 745 (C. P. 1897).
15153 Pa. Dist. 673 (C. P. 1893).
17171 Pa. Dist. 84 (C. P. 1891).
A corporate charter was refused to an organization which proposed to render mutual assistance to members upon their marriage, such assistance to consist of assessments levied against the membership. The court indicated that anything which would induce parties to enter into the marriage relationship through mercenary motives would strike at the very foundation of human society and would necessarily be injurious to the community.\textsuperscript{19}

In the case of \textit{In re Appeal of Solebury Mutual Protective Association},\textsuperscript{20} a charter was refused which indicated that the purpose of the corporation was for the recovery of property stolen from its members or for the reimbursement of such members in case such property was not recovered. The court stated that the purpose as thus expressed was injurious to the community because it did not indicate that punishment of the persons responsible for the crime was also intended.

A corporate charter was refused in the case of \textit{Charter of St. Ladislaus Roman Catholic Beneficial Ass'n},\textsuperscript{21} partly because the by-laws provided that the Hungarian language should be the sole official language used. The court expressed the opinion that a charter should not be granted to an association so little in sympathy with American institutions as to prohibit the use of the English language in the transaction of its official business and the deliberations of its members.

In the case of \textit{Business Association of Pennsylvania},\textsuperscript{22} the court indicated that it was a questionable policy to incorporate an organization for the purpose of influencing the passage, amendment or repeal of legislation.

In \textit{re Charter P. L. P. A.},\textsuperscript{23} it was indicated that a charter for the protection of personal liberty was unnecessary on the ground that personal liberty was secured to every one by the laws of the land.

In \textit{re Prince of Peace Hospital},\textsuperscript{24} a charter was refused to a lying-in hospital which proposed to care for unmarried women during pregnancy. The court stated that it could not agree that the proposed corporation would not be injurious to the community for by concealing the true situation, certain women might be enabled to enter into marriage contracts under false pretenses and also because the hospital planned to make no provision for caring for the children.

\textit{"Community"}

In using the word "community" in Sections 201 and 207, the Legislature evidently contemplated not any particular political or geographical unit, but

\textsuperscript{19}\textit{In re Helping Hand Marriage Association, 15 Phila. 644, 38 Leg. Int. 423, 2 York 177 (C. P. 1881). See also Mutual Aid Ass'n. of North America, for Unmarried Persons, 15 Phila. 625 (C. P. 1881).}

\textsuperscript{20}3 Montg. 56 (C. P. 1883).

\textsuperscript{21}3 Pa. C. C. 25 (C. P. 1897).

\textsuperscript{22}Pa. C. C. 475 (C. P. 1908).

\textsuperscript{23}L. T. R. (N. S.) 5 (1883).

\textsuperscript{24}12 Pa. Dist. 242 (C. P. 1902).
rather the general neighborhood over which the activities of the proposed corporation will likely extend.

**Court's Discretion**

Except for the foregoing general observations, it is difficult to formulate any workable rule for ascertaining whether or not any particular corporate purpose is lawful and not injurious to the community. The language of Sections 201 and 207 is very general, and the discretion which may be exercised by courts of common pleas in granting or refusing charters to nonprofit corporations is correspondingly broad.

In the case of *Philadelphia Labor's Non Partisan League Club's Application for Incorporation,* the scope of the court's right to review the purpose of a proposed nonprofit corporation is thus described:

"The duty of the court is somewhat different in passing upon charter applications laid before it from what it is in some other matters, because it is required by the law to certify that the purpose or purposes given in the articles are lawful and not injurious to the community. The applicants must satisfy the court as to the propriety of its certificate, 'otherwise,' in the language of the act, 'the court shall refuse the application.' It should always be borne in mind that in charter applications the applicants are asking the court for a special privilege as to the propriety of granting which, its conscience must be satisfied. In *Deutsch-Amerikanischer Volksfest-Verein,* 200 Pa. 143, 145, 49 A. 949, we said: 'The court undoubtedly may and should look into the nature of the proposed social enjoyment, to see that it is "lawful and not injurious to the community."'"

In past decisions under either the Corporation Act of 1874 or the Nonprofit Corporation Law of 1933 are any criterion, the courts will show no inclination to restrict the scope of their discretion in granting corporate charters.

In *Appeal of Vaux Executor,* a proposed corporation for the administration of certain charitable bequests was refused a charter because it appeared that the purpose set forth in the articles of incorporation was not in strict conformity with the provisions of the will.

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28 Pa. 465, 196 Atl. 22 (1938).
26 At page 469.
27 See also *In re Central Democratic Ass'n. of Phila.,* 8 Pa. C. C. 392 (C. P. 1889); *Appeal of Vaux Executor,* 109 Pa. 497 (1885); *In re Elkland Leather Workers' Ass'n., Inc.,* 330 Pa. 78, 198 Atl. 13 (1938).
28 Pa. 497 (1885).
28 See also *Curran Foundation Charter,* 297 Pa. 272, 146 Atl. 908 (1929).
In *Sullivan County Fishing and Hunting Club*, a charter was refused to an organization the purpose of which was the preservation of game and fish by stocking the territory in a certain township. The court refused the charter because it did not appear that the proposed corporation owned any real estate in the township named, nor that it had any proprietary rights in the woods and streams to be stocked. The court ruled that the invasion of property of others for the purpose mentioned would make the incorporators trespassers.

In the case of *Philadelphia Labor's Non Partisan League Club's Application*, a charter was refused by the lower court largely because of the supposedly undesirable nature of the incorporators. The action of the lower court was reversed by the Supreme Court, but the reversal was based upon the fact that the applicants had not been given opportunity to be heard in defense.

The question involved in *In re Animal Humane Society of Pennsylvania* was whether a charter should be granted for a society for the protection of dumb animals. The court refused the application, saying "a grant of this application will not be for the best interests of the animals, and will be harmful, rather than helpful, to the community." The reasons given in support of this refusal were

1. Similar existing societies in the locality adequately protect animals, and should not have their revenues decreased by the addition of one more such society.

2. The proposed corporation will be a one-man organization, and such organizations are usually of short duration.

3. Such societies as the one proposed are given police powers, and in these days of efficient police forces there should be no increase in the number of private agencies invested with these powers.

In connection with the last of these reasons the court made the following statement:

"These societies under existing law are unique in that they are given police powers and empowered to make arrests and conduct prosecutions. The society shares any fine imposed upon the defendant. In these days of efficient and well organized public police forces, such as exist in Lower Merion Township, we look with disfavor upon any increase in the number of private agencies invested with these powers. An individual whose compensation may depend to some extent upon the fines collected is faced with a grave temptation to

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3015 Pa. Dist. 650 (C. P. 1907).
33At page 329.
bring unfounded and unnecessary prosecutions, and with perhaps the help of a cooperating magistrate, oppress the public. This tends to lower the public conception of the administration of justice, and hence is injurious to the community."

In *Patriotic Sons of Italy*, a charter was refused because the court felt that the initial fees and dues would be inadequate to meet the expenses which would necessarily be incurred. Similarly, in *Mutual Benefit Society*, a charter was refused largely on the ground that the proposed corporation would probably become insolvent.

In *Rox Athletic Association's Charter Application*, a charter was denied for the following reason:

"With the preposterous initiation fee of 25 cents and the equally preposterous monthly dues of 25 cents, it seems asking too much to designate such a club as a bona fide athletic club. We do not intend to grant a charter to an organization that cannot exist except by 'passing the hat' or by procuring a license and selling liquor to the members, thus adding one more drinking resort to those already posing as chartered clubs."

The courts have also refused to approve a corporate purpose as lawful because it was not described with sufficient care and particularity.

Under the prior law the courts sometimes declared that corporate charters should not be granted for any purpose which could be attained equally well without incorporation. This requirement was apparently abandoned by the Supreme Court in the case of *Deutsch-Americanischer Volksfest-Verein*, although in the case of *In re United Sportswear Workers' Union*, decided under Sections 201 and 207, there is an intimation that it still exists. However, in the case of *Hill Top Club's Application for Incorporation*, it was definitely ruled that a charter would not be refused merely because all purposes of a proposed corporation could be accomplished without a charter.

**Statutory Exceptions**

In considering the court's power to determine whether a corporate purpose is lawful and not injurious to the community, it should be remembered that in

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8467 Pitts. 32 (C. P. 1919).
3Chinese Club, 1 Pa. Dist. 84 (C. P. 1892).
3200 Pa. 143, 49 Atl. 949 (1901).
4See also Rox Athletic Ass'n's Charter Application, 318 Pa. 258, 178 Atl. 464 (1935).
certain specified cases approval of a proposed charter must also be obtained from other agencies.

Thus, under Sections 211 and 212 of the Nonprofit Corporation Law, educational institutions desiring to confer degrees, and charitable and eleemosynary institutions, must secure the approval of the State Council of Education and the Department of Welfare of the Commonwealth, respectively, before the court may grant a charter. Similarly, under the Acts of 1937, corporations proposing to provide group hospitalization must secure approval of their charters from the Insurance Department.

In these particular cases the court must withhold approval of the charter unless the organization secures the approval of the required agency. However, even after the required approval has been secured, the court has the same power as in other cases to determine independently whether the corporate purpose is lawful and not injurious to the community.

APPEAL

The question occasionally arises as to whether there is any right to an appellate review of a court's determination that a corporate purpose is unlawful or injurious to the community. It has been held that, since the statute is silent on this point, the decree of the lower court may be brought before the Supreme Court by way of certiorari. However, under such procedure the scope of review is limited to a consideration of whether or not the lower court abused its discretion or committed an error of law. Whether or not the lower court acted wisely in refusing or granting an application may not be considered.

CONCLUSION

In conclusion, it is submitted that Sections 201 and 207 of the Nonprofit Corporation Law of 1933, which permits the formation of nonprofit corporations for any purpose or purposes which are lawful and not injurious to the community, are workable and beneficial pieces of legislation.

The restrictions upon the purposes of nonprofit corporations must have considerable flexibility if this type of corporation is to attain maximum utility. The temptation which might otherwise exist to form corporations for improper purposes is largely counteracted when the corporation is nonprofit in nature, and the Legislature can safely rely upon the courts to exert any additional retardation which proves necessary in this respect.

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44In re Elkland Leather Workers' Ass'n, Inc., 330 Pa. 78, 198 Atl. 13 (1938).
Even though economists and sociologists might differ irreconcilably as to whether any particular corporate purpose is injurious to the community, the judges of the various courts of common pleas are agencies well calculated to estimate the practical future effect of a proposed nonprofit corporation. As we have seen, in isolated cases the courts have advanced unsound reasons in support of their action in refusing applications for corporate charters. Fortunately these cases are few as compared with the great number of charters granted, and any occasional misconception as to the probable social effect of a proposed nonprofit corporation is less injurious to the people of the Commonwealth than would be legislation enumerating or further restricting the permissible purposes of such corporation.

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