

10-1-1961

Corporations—Statutory Revisions Incorporated by Reference in Charter

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Recommended Citation

Buffalo Law Review Board, *Corporations—Statutory Revisions Incorporated by Reference in Charter*, 11 Buff. L. Rev. 134 (1961).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol11/iss1/44>

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pursuant to the amended by-laws invalid because a quorum of the electing members was not present.

The original charter granted to the Knights of Columbus in 1926 specifically authorized the corporation to adopt "by-laws . . . for the accomplishment . . ." of the purposes of its incorporation; and legislation in 1957 amending the original charter not only authorized an increase in the board of directors, but also left the "method" of their "selection" and "qualifications" to be fixed by the by-laws of the corporation. In addition, the by-laws had always authorized amendment thereof by a simple "majority vote of the directors." The Court discussed the purpose of the amendment adopted and concluded that it was consonant with the aims of the Knights of Columbus. Moreover, the Court decided that the amendment was adopted in accord with the by-laws adopted pursuant to the charter permitting amendment by a majority vote.

Reviewing the provisions of the by-laws concerning the election of the new members, the Court held that a *quorum* of members eligible to vote as such was not present at the meeting when the directors were to be elected for a full term. Summarizing the import of the by-law provisions, the four newly created directorship positions were to be filled temporarily by four third degree members chosen by the board. These interim directors were to hold office until the annual meeting. At that time the "*then (eleven) members*" of the corporation were to elect four men to fill permanently the newly created directorship positions; and six of the "*the (eleven) members*" of the corporation would constitute a quorum at that meeting. (Emphasis added.)

At the election, the four interim directors who had never been elected members and only *five* of the "then" eleven members of the corporation were present. Since a quorum was not present the election held was void. In reaching its conclusion the Court reasoned that since the membership provisions of the by-laws were clearly expressed, no court could amend them anymore than rewrite any other contract.

Bd.

STATUTORY REVISIONS INCORPORATED BY REFERENCE IN CHARTER

In *Fruhling v. Amalgamated Housing Corp.*,⁴⁵ plaintiff sought a declaratory judgment that he, a tenant-stockholder of a private limited dividend housing co-operative corporation organized under the State Housing Law,⁴⁶ could not be subjected to a surcharge upon his rent or evicted because his income exceeded the statutory maximum. Plaintiff argued that legislation subjecting such private companies to the restrictions of the Public Housing Law, in particular those sections providing for a given ratio of income to rent as a condition of continued occupancy and surcharges,⁴⁷ amounted to an unconstitutional impairment of a contractual obligation and to a taking of property without due

45. 9 N.Y.2d 541, 215 N.Y.S.2d 493 (1961).

46. N.Y. State Housing Law, now N.Y. Public Housing Law § 182(3).

47. N.Y. Public Housing Law § 182 (3)(a)(4).

process of law. He argued that the contract allegedly impaired, and the property rights in question, derived from the old State Housing Law.

The Court of Appeals held that by the express terms of the statute any such contract and rights acquired were qualified ones. The purpose of the statute was to eradicate congested and unsanitary housing conditions prevailing in low priced dwellings by permitting construction of new facilities, in accord with proper standards of sanitation and safety, at a cost which would permit rentals which wage earners could afford.⁴⁸ In return for the privilege of incorporating under this statute and receiving its benefits such as tax exemptions, defendant agreed in its certificate of incorporation that all property acquired by it would be subject to the provisions of the State Housing Law.⁴⁹ This law, incorporated by reference into the corporation's charter, was always subject to future change required to promote effectively the objectives of the statute. The subsequent amendments to the statute, being a reasonable application of the police power, and being related to the objects of the legislation, were not unconstitutional.

The Court further considered the effective date of the rental surcharge. At the commencement of the action, the surcharge was based upon a regulation by the Commissioner of Housing.⁵⁰ While plaintiff's appeal was pending in the Appellate Division, the Legislature amended the statute to specifically provide for such surcharges.⁵¹ The Court found that prior to the date of the amendment, the Legislature had not intended to impose a surcharge on private housing co-operatives. Thus, the Commissioner's regulation conflicted with his statutory authority and was invalid. There being no indication that the amendment was intended to impose surcharges *nunc pro tunc*, its application was prospective only.

Bd.

CREDITORS' RIGHTS

CONTRACTOR HAS NO PROPERTY RIGHT IN TRUST FUNDS HELD FOR SUB-CONTRACTOR

In *Aquilino v. United States*,¹ Aquilino and his co-partner, doing business under the name of Home Maintenance Co., together with Colonial Sand and Stone Co. entered into contracts with Fleetwood Paving Corporation, the general contractor, to furnish labor and material for remodeling a restaurant owned by Ada Bottone. On October 31, 1952, Federal tax liens were filed against Fleet-

48. N.Y. State Housing Law § 2.

49. N.Y. State Housing § 30(12).

50. Reg. 12, Commissioner of Housing.

51. *Supra* note 47.

1. 10 N.Y.2d 271, 219 N.Y.S.2d 254 (1961).