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## Corporations—Membership Corporations—Requirement for Membership Approval

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## COURT OF APPEALS, 1957 TERM

The Court distinguished *Sterling* from the instant case because in the latter instance (1) the initiation of litigation was never submitted to the board for approval and (2) demanding arbitration under the contract clause amounted to no more than the routine performance of a contract, within the president's general management authority; although the board could have expressly forbidden submission of a particular disputes to arbitration, it had not done so.<sup>16</sup>

The distinction drawn seems somewhat fine. The inclusion of a general arbitration clause in a contract should settle the *form* of remedy between the contracting parties.<sup>17</sup> However, the question whether to press a particular claim involves policy considerations traditionally left to the business discretion of the board of directors, subject to the director's fiduciary duty to shareholders.<sup>18</sup> That the proposed litigation is to be by arbitration rather than by adjudication should not affect this.

The case seems to rest on the factual distinction that here the proposed action was not submitted to the board and suggests that if a corporation general managing officer, facing a deadlocked board, acts on his own initiative without consulting the board, his action will be sustained even if he knew that he could not have obtained approval from the board. This, it is submitted, is not in keeping with the policy of the statute<sup>19</sup> or the well-reasoned *rationalia* of the *Sterling* decision.<sup>20</sup>

### Membership Corporations—Requirement for Membership Approval

Approval not having been obtained from the Supreme Court of a lease entered into by a membership corporation as required by section 21 of the Membership Corporation Law,<sup>21</sup> this proceeding was brought by the lessee thereunder for its confirmation.<sup>22</sup> The lease had been approved by the board of directors of the corporation with the requisite quorum present. However, the evidence established that the scheme of the by-laws indicated an intent that every decision of the organization, not purely ministerial in nature, be made by a majority vote of the members. Thus, the lease was not validly entered into by the corporation in the first place, and there was nothing for the Court to approve.

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16. *Paloma Frocks, Inc. v. Shamokin Sportswear Corp.*, 3 N.Y.2d 572, 170 N.Y.S.2d 509 (1958).

17. N. Y. CIV. PRAC. ACT Art. 84.

18. *Koral v. Savory*, 276 N.Y. 215, 11 N.E. 883 (1937); *Posts v. Buck's Stove & Range Co.*, 200 Fed. 918 (8th Cir. 1912).

19. N. Y. GEN. CORP. LAW §27.

20. *Sterling Industries v. Ball Bearing Pen Corp.*, 298 N.Y. 483, 84 N.E.2d 790 (1949).

21. "No sale or mortgage . . . of real property within the state, or lease thereof for more than five years, shall be made without leave of the supreme court in a judicial district in which some of the property is located, or the county court of the county wherein the property is wholly or partly situated. . . . If [a lease has been entered into without approval], the court . . . may confirm such . . . lease, subject to the intervening rights, if any, of subsequent bona fide purchasers and mortgages of record."

22. *In re Trapasso Oldsmobile, Inc.*, 4 N.Y.2d 133, 173 N.Y.S.2d 10 (1958).

Although the traditional method is to vest the business of a corporation in the board of directors,<sup>23</sup> there was no reason, in the absence of contrary public policy, why the membership through its by-laws could not place restrictions upon the directors in addition to the provisions of the statute,<sup>24</sup> particularly in a matter of such importance as the leasing of real property for long periods of time.

#### Religious Corporations—Election of Rector

Culminating a long controversy concerning the Holy Trinity Episcopal Church in New York City, the vestry of that church purportedly met and elected a new rector. The validity of that election depended on whether there was a valid quorum, which in turn depended on what law applied. The statutory quorum requirements<sup>25</sup> were not satisfied, although those of the canon law of the church were. Restricting itself to a construction of the statute, and thus not reaching the constitutional issue of the power of the state to regulate religious affairs,<sup>26</sup> the Court held that the legislature did not intend that the statute should apply to elections of new ministers,<sup>27</sup> a conclusion evident both from the provision that the vestry could elect a rector "subject to the canons of the Protestant Episcopal church"<sup>28</sup> and from the disclaimer in the general article of the Act of any intent that the Act should authorize any election.<sup>29</sup>

#### Consent of Political Party Chairman to Formation of New Political Membership Corporation

Section 10 of the Membership Corporation Law provides for the incorporation of political clubs subject to the approval of a justice of the Supreme Court of the judicial district in which the office of the corporation is to be located. In addition, the statute declares that if the name of the proposed political organization includes the name of a political party, the consent of the chairman of the county committee must be given, except in cases where the Supreme Court should find the withholding of such consent to be unreasonable. In *In re Roosevelt*,<sup>30</sup> the Court of Appeals, per curiam, found the refusal of the county chairman to indorse the incorporation of the "Metropolitan Republican Club" to have been reasonable on the facts and thus denied approval for the requested incorporation.

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23. N. Y. GEN. CORP. LAW, §27.

24. Corporations may make by-laws not inconsistent with law. N. Y. GEN. CORP. LAW, §14, N. Y. MEM. CORP. LAW, §20.

25. N. Y. REL. CORP. LAW, §42 (1919).

26. The Appellate Division had intimated that if this statute regulated the election of a new minister in the situation of this case, it would be without the state's constitutional power. See *Rector v. Mellish*, 4 A.D.2d 256, 259-261, 164 N.Y.S.2d 843, 848-849 (2d Dep't 1957).

27. *Rector v. Mellish*, 3 N.Y.2d 476, 168 N.Y.S.2d 952 (1957).

28. N. Y. Rel. Corp. Law, §42 (1919).

29. N. Y. Rel. Corp. Law, §25 (1895).

30. 4 N.Y.2d 19, 171 N.Y.S.2d 841 (1958).