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# Business Associations—1961 Tennessee Survey (II)

*Kenneth L. Roberts\**

## I. REVOCATION OF CHARTER OF GENERAL WELFARE CORPORATION

## II. FOREIGN CORPORATION—"DOING BUSINESS"—SERVICE OF PROCESS

Three cases having to do with corporations were decided during the survey period.<sup>1</sup>

### I. REVOCATION OF CHARTER OF GENERAL WELFARE CORPORATION

In the much-publicized case of *Highlander Folk School v. State ex rel. Sloan*,<sup>2</sup> the supreme court upheld the revocation of the charter and dissolution of a general welfare corporation.

The school was granted a general welfare charter in 1934 for the purposes of supporting adult workers' education, training rural industrial leaders and providing a general academic education. The charter contained provisions generally applicable to such corporations, *e.g.*, that the object of the corporation was the general welfare of society and not individual profit and that no dividends or profits should be divided among the members; that the means and assets should not be employed for any purpose other than the accomplishment of the legitimate objects; that the corporation should not have power to sell products or engage in any trading operation; and that a violation of any of the provisions would subject it to dissolution at the instance of the state.<sup>3</sup>

In a quo warranto proceeding against the corporation there was evidence that beer was kept upon the school premises and sold to students and teachers without a license. It was also proved that the school had conveyed seventy acres of land to Myles Horton, its founder; that Horton lived on the school property; that for twenty-five years all his expenses and those of his family and servants were paid from school funds, and that Horton generally managed the school's funds and affairs and fixed a

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1. From September 1, 1961 to December 31, 1961. Cases published in 1961 prior to September 1 are discussed in Roberts, *Business Associations—1961 Tennessee Survey*, 14 VAND. L. REV. 1141 (1961).

2. 345 S.W.2d 667 (Tenn. 1961).

3. Statutory provisions relating to general welfare corporations are found in TENN. CODE ANN. §§ 48-1101 to -1121 (1956). See particularly § 48-1109 and § 48-1110. See also TENN. CODE ANN. §§ 23-2801 to -2818 (1956) concerning vacation of charters.

salary for himself of \$9,000 per annum. The jury found that the school was being operated in violation of its charter and the laws of the State and that the charter should be revoked and the corporation dissolved. The corporation assigned error. The supreme court overruled the assignments of error and remanded.

The court, speaking through Chief Justice Prewitt, felt that the preponderance of evidence showed that the corporation was operated for the private gain of Horton and that this "was a misuse and abuse of its powers, and perverse of the objects for which it was created and injurious to the public."<sup>4</sup> The unlicensed sale of beer was held to be in violation of the charter and contrary to criminal<sup>5</sup> and nuisance<sup>6</sup> statutes. Premising its conclusion on these grounds, the court found it unnecessary "to pass upon the constitutional question as to the mixing of white and colored, male and female, in the same school."<sup>7</sup>

There is authority supporting the court's determination that revocation and dissolution should be enforced where a corporation acts in violation of its charter provisions or contrary to general law.<sup>8</sup> The court has on other occasions seemed reluctant to demand such a remedy where it found that the abuses might be corrected or an injunction would be sufficient.<sup>9</sup> It also has indicated that violations of statutes of general applicability would not, of themselves, be sufficient to bring about a forfeiture where such statutes provided a specific penalty.<sup>10</sup>

## II. FOREIGN CORPORATION—"DOING BUSINESS"—SERVICE OF PROCESS

The cases of *Tucker v. International Salt Co.*,<sup>11</sup> decided by the Tennessee Supreme Court, and *Shuler v. Wood*,<sup>12</sup> decided by Judge Taylor of

4. 345 S.W.2d at 669.

5. TENN. CODE ANN. § 57-208 (1956) provides that any corporation selling beer without a permit or license from the city or county shall be guilty of a misdemeanor.

6. "The conducting, maintaining, or engaging in the sale of intoxicating liquors; the keeping, maintaining or conducting bawdy or assignation houses; . . . in any building, structure, or place, and all means, appliances, fixtures, appurtenances, materials, and supplies used for the purpose of conducting, maintaining, or carrying on such unlawful business, occupation, game, practice, or device or houses where drunkenness, quarrelling, fighting, or breaches of the peace are carried on or permitted, to the disturbance of others are declared to be public nuisances . . . ." TENN. CODE ANN. § 23-301 (1956).

7. 345 S.W.2d at 671.

8. See *State v. Family Loan Co.*, 167 Tenn. 654, 73 S.W.2d 167 (1933); *State v. Southern Junior College*, 166 Tenn. 535, 64 S.W.2d 9 (1933); *Annot.*, 46 A.L.R. 1478 (1927); 13 AM. JUR. *Corporations* §§ 1314, 1318 (1938).

9. *State v. Southern Pub. Ass'n*, 169 Tenn. 257, 84 S.W.2d 580 (1935); *State v. Family Loan Co.*, *supra* note 8.

10. *State ex rel. Pitts v. Nashville Baseball Club*, 127 Tenn. 292, 154 S.W. 1151 (1912).

11. 349 S.W.2d 541 (Tenn. 1961).

12. 198 F. Supp. 801 (E.D. Tenn. 1961).

the Federal District Court for the Eastern District of Tennessee, dealt with interesting and diverse questions of "doing business" by foreign corporations as relating to service of process. These cases are fully discussed elsewhere in this survey.<sup>13</sup>

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13. The *Tucker* case is discussed by Professors Morgan and Handler in *Procedure and Evidence—1961 Tennessee Survey (II)*, 15 VAND. L. REV. 921, 933-34 (1962). Professor Cheatham treats *Shuler* in *Conflict of Laws—1961 Tennessee Survey (II)*, 15 VAND. L. REV. 843 (1962).