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Business Associations -- 1957 Tennessee Survey

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BUSINESS ASSOCIATIONS—1957 TENNESSEE SURVEY

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Very little happened in the field of Business Associations during the survey period. The General Assembly enacted one fairly important set of amendments to the Securities Law, and the Tennessee appellate courts handed down two or three decisions which in a large part merely reiterated principles of corporation law already well-established in this state.

Amendments to the Securities Law Broadening Grounds for Refusing or Revoking Registration of Securities: The Securities Law of 1955[1] among other things set up a procedure for the registration of securities intended for sale and gave the Commissioner of Insurance and Banking authority to investigate the securities and the issuer. One section of that law provided in effect that the Commissioner might refuse to register securities[2] if he found that: (1) the sale of the securities would work or tend to work a fraud on purchasers; (2) the issuer of the securities was insolvent; or (3) statements in the prospectus were fraudulent, contained untrue material or omitted a material fact required to be stated or necessary to make the statements not misleading.

Another section[3] empowered the Commissioner to revoke the registration of securities after a hearing or opportunity for hearing if he found that: (1) the sale of the securities would work or tend to work a fraud upon the purchasers; (2) the issuer of the securities was insolvent, had violated a provision of the Securities Law or an order of the Commissioner, or had failed to conduct its business in accordance with law; (3) the issuer had in a prospectus or literature made fraudulent representations or omitted to state a material fact required to be stated or necessary to make statements therein not misleading; or (4) the issuer had refused to permit an examination into its affairs or had failed to furnish the Commissioner required information.

The 1957 act amending the Securities Law[4] broadened the powers of the Commissioner by giving him authority to deny registration or to revoke registration on the following additional ground: namely, that the proposed plan of business of the issuer appears to be unfair, unjust or inequitable. In determining whether this ground exists the Commissioner is directed to take into consideration the following

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1. TENN. CODE ANN. §§ 48-1601 to -1648 (Supp. 1957).
2. TENN. CODE ANN. § 48-1613 (Supp. 1957).
3. TENN. CODE ANN. § 48-1615 (Supp. 1957).
4. Tenn. Pub. Acts 1957, c. 83, §§ 2, 4, TENN. CODE ANN. §§ 48-1613, -1615 (Supp. 1957).

standards and factors:[5] (1) the type of business proposed to be transacted; (2) the territorial extent of the proposed plan; (3) the time element involved in carrying out the proposed plan; (4) the existing assets and liabilities and surplus, if any, of the issuer; (5) the additional capital and surplus to be received by the issuer of the proposed plan; (6) the consideration paid, or to be paid, by promoters for securities or options to purchase securities, whether such consideration is less than the proposed offering price to the public and, if so, whether there is a reasonable and fair basis for the difference in said consideration; (7) the offering price of the securities to the public; and (8) any and all other matters and things which the Commissioner may deem necessary or material in connection with each particular application for the registration of an issuer of securities.[6]

Miscellaneous Corporation Rules Reaffirmed by the Courts: The appellate courts reaffirmed a number of well-established rules of corporation law. In *Cravens v. Tanner*,[7] the Supreme Court of Tennessee held that failure to deny an allegation of corporate status contained in a cross-bill was an admission that the party there referred to was a domestic corporation and precluded later litigation to obtain a declaration that the decree obtained was void on the ground that the corporation's charter had been revoked by the state and that the fact of revocation had been concealed. The holding was based on a Tennessee statute[8] which provides that whenever a party is alleged to be a corporation it shall not be necessary to prove the allegation "unless the corporate existence of such a corporation is denied under oath in writing." The court also discussed earlier decisions[9] which pointed out that the corporate status of a party to a suit is an easy matter for opposing litigants to check and that a rule treating a failure to deny an allegation of corporate status as an admission of that status is necessary for the orderly dispatch of litigation.

In *Springfield Tobacco Redryers Corp. v. City of Springfield*[10] one of the defenses in an action to recover damages for an alleged breach of contract was that the complainant had no corporate existence or power to contract on the date when the contract was made. The court, applying the doctrine of corporation by estoppel, struck down this

5. Tenn. Pub. Acts 1957, c. 83, § 2. TENN. CODE ANN. § 48-1613 (Supp. 1957).
6. Tenn. Pub. Acts 1957, c. 83, §§ 1, 3, TENN. CODE ANN. §§ 48-1611, -1614 (Supp. 1957) makes certain changes in the effective date of securities registrations and increases the amount of the fee required for the renewal of a securities registration.
7. 291 S.W.2d 582 (Tenn. 1956).
8. TENN. CODE ANN. § 20-707 (1956).
9. Sartain v. Dixie Coal & Iron Co., 150 Tenn. 633, 266 S.W. 313 (1924); Stearns Coal & Lumber Co. v. Jamestown Ry., 141 Tenn. 203, 208 S.W. 334 (1919).
10. 293 S.W.2d 189 (Tenn. App. M.S. 1956).

defense, commenting that under the statutes[11] and decisions[12] in Tennessee it is well settled "that where a party enters into a contract with a purported corporation, he thereby admits its corporate existence, and is afterwards estopped to deny it; and that only the State can raise the question of corporate existence."[13]

Range v. Tennessee Burley Tobacco Growers Association[14] was a suit by eleven members of an incorporated tobacco growers association against the association and its officers. One objective of the suit was to stay alleged waste in the operation and management of the corporation and to recover damages for complainants and other members similarly situated for alleged waste already committed. The court of appeals sustained the chancellor's holding that waste and mismanagement had not been established. In addition, the court of appeals went on to say that the intrusion of a court of equity into the internal affairs of a corporation is generally not warranted in the absence of fraud, corruption or ultra vires activities[15] and that, in any event, complainants could not maintain the action in their capacity as shareholders[16] because they had not complied with the rule (firmly established in Tennessee)[17] that shareholders cannot sue the corporation or its officers for the purpose of remedying wrongs alleged to have been committed against the corporation, without first applying to the directors to have the wrongs abated, unless it appears that application to the directors would be futile and an idle ceremony. The court of appeals, however, did permit the complainants to recover against the association as creditors on another cause of action separate from the alleged waste.[18]

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11. *Id.* at 198; TENN. CODE ANN. §§ 48-110. -711 (1956).
12. Eastern Products Corp. v. Tennessee Coal, Iron & R.R. Co., 151 Tenn. 239, 269 S.W. 4, 40 A.L.R. 1483 (1925); Reed v. Appleby, 150 Tenn. 63, 262 S.W. 35 (1924); Ingle System Co. v. Norris & Hall, 132 Tenn. 472, 178 S.W. 1113, 5 A.L.R. 1578 (1915).
13. 298 S.W.2d at 198.
14. 298 S.W.2d 545 (Tenn. App. E.S. 1955).
15. *Id.* at 549.
16. *Id.* at 550.
17. Peeler v. Luther, 175 Tenn. 454, 135 S.W.2d 926 (1940); McCampbell v. Fountain Head Ry., 111 Tenn. 55, 77 S.W. 1070 (1903); State v. Mitchell, 104 Tenn. 336, 58 S.W. 365 (1899); Boyd v. Sims, 87 Tenn. 771, 11 S.W. 948 (1889).
18. The only partnership case decided during the survey period was Kelso v. Kelso, 292 S.W.2d 483 (Tenn. App. E.S. 1955) (where fraud was practiced by the partner in charge of the business and discovered by the other partner after he had sold his interest to his injury, an accounting was as proper as if selling partner had sold to the other partner).