

The above quotations are the only significant debate concerning the portion of Article XI, Section 5, which is applicable here. They clearly support the intent of the delegates that the power of the Legislature to fix salaries of unclassified persons be not limited, but that the Civil Service Commission be required to make a recommendation as to what such salaries should be. These recommendations are not binding upon the Legislature.

Therefore, it is the opinion of the Attorney General that the Legislature is empowered to set the salaries for persons occupying positions excepted or exempted from the classified state civil service.

FRANK J. KELLEY,
Attorney General.

651018.1

CORPORATIONS: Corporation may not form a partnership.

PARTNERSHIPS: Corporation may not form a partnership.

The Michigan Corporation and Securities Commission may not issue a certificate of authority pursuant to Sec. 94 of Act 327, P.A. 1931, as amended, to an Ohio corporation seeking to be admitted into Michigan for the purpose of entering into a partnership.

No. 3652

October 18, 1965.

Mr. Lenton G. Sculthorp, Commissioner
Corporation and Securities Commission
300 East Michigan Avenue
Lansing, Michigan

You have asked my opinion on the following question:

"May the Michigan Corporation and Securities Commission issue a certificate of authority pursuant to Sec. 94 of Act 327, P.A. 1931,¹ as amended, to an Ohio corporation seeking to be admitted into Michigan for the purpose of entering into a partnership?"

Under Section 94 of the General Corporation Act, a foreign corporation may be issued a certificate permitting it to transact business in this state if it is incorporated for a purpose for which a corporation may be formed under the laws of this state.

Expression of intention to form a partnership, however, is not an expression of purpose, but of intent to assume an identity other than that of a corporation. The term "purpose" means the business activity to be engaged in; e.g., selling shoes, purveying services, not the identity to be assumed. Therefore, the question is: does a corporation have the power to form a partnership and to do business as a partnership?

In 1887, in *The Cleveland Paper Company v. The Courier Company*,²

¹ Act 327 is the Michigan General Corporation Act; § 94 was last amended by P.A. 1961 No. 15; C.L.S. 1961 § 450.94; M.S.A. 1963 Rev. Vol. § 21.95.

² 67 Mich. 152.

the Court found a foreign corporation liable for the debt of its domestic corporation "partner," on the basis of contract, saying in the course of the opinion that:

"A corporation may, in furtherance of the object of its creation, contract with an individual, though the effect . . . may be to impose upon the company the liability of a partner. And, as to third persons, the liability of a partner is frequently imposed, . . . even though a partnership could not have been made. . . ." (page 158)

In *White Star Line v. Star Line of Steamers*,³ the Court held that an agreement between corporations operating distinct lines of steamers plying between the same points, to pool their earnings, and to divide net earnings in certain proportions, does not and cannot create a partnership, saying at page 610:

"The law appears well settled that corporations cannot enter into copartnerships with each other."⁴

Following this case in 1924, the Attorney General re-emphasized the point by issuing an opinion dated June 17, 1924, O.A.G. 1923-24, page 355. The following excerpt from that opinion plainly states the generally accepted reasons for this conclusion:

"A partnership and a corporation are incongruous. Such a contract is wholly inconsistent with the scope of the powers expressly conferred and the duties expressly enjoined upon a corporation.

"In a partnership each member binds the firm when acting within the scope of the business. A corporation must act through its directors and no individual member, can as such member, bind the corporation. If a corporation be a member of a partnership it may be bound by another member of the association and in so doing he would act, not as an officer or agent of the corporation and by virtue of authority received from it, but as a principal or an associate in which all are equal, and each capable of binding the association by his acts.

"The whole policy of the law creating and regulating corporations looks to the exclusive management of the affairs of each corporation by the officers provided for or authorized by its charter, and any arrangement by which the control of the affairs of the corporation should be taken from a stockholder, and the authorized officers and agents is contrary to the policy of the corporation laws of this state."

This opinion and the cases cited have not been overruled and as of this date corporations have not been permitted to form partnerships in this state.

The Michigan Uniform Partnership Act⁵ provides at § 2 in pertinent part that in this act, the word "person" includes corporations.⁶ Section 6

³ 141 Mich. 604.

⁴ The decisive holding in this case is that the "pooling" contract was an illegal monopoly violative of the federal Sherman Act.

⁵ Act 72, P.A. 1917, as amended, being C.L. 1948 and C.L.S. 1961 §§ 449.1 *et seq.*; M.S.A. 1964 Rev. Vol. §§ 20.1 *et seq.*

⁶ C.L. 1948 § 449.2; M.S.A. 1964 Rev. Vol. § 20.2.

provides in pertinent part that a partnership is "an association of 2 or more persons. . . ."⁷

The statute governing corporations, however, is the Michigan General Corporation Act.⁸ Its title is as follows:

"AN ACT to provide for the organization, regulation and classification of corporations; to provide their rights, powers and immunities; to prescribe the conditions on which corporations may exercise their powers; to provide for the inclusion of certain existing corporations within the provisions of this act; to prescribe the terms and conditions upon which foreign corporations may be admitted to do business within this state; to require certain annual reports to be filed by corporations; to prescribe penalties for the violations of the provisions of this act; and to repeal certain acts and parts of acts relating to corporations."

The General Corporation Act contains no provision authorizing corporations to form partnerships. Without such provision in the governing statute, it cannot be said that a foreign corporation has authority to form a partnership in Michigan.

The Michigan Supreme Court has held that a partnership association is not a corporation, and the title of the Michigan General Corporation Act is insufficient to include matters pertaining thereto.⁹ The same rule must apply to partnerships other than partnership associations.

As was pointed out in *Hill-Davis*, there is nothing in the title of the Michigan General Corporation Act which indicates that it includes partnership associations, which are therefor not within the title of the act (page 94).

To read the Michigan General Corporation Act to govern partnerships would be to extend the orbit of the statute beyond the reach of its title, as the Court in *Hill-Davis* stated at pages 93-94, with reference to partnership associations.

So, also, to read the definitional provisions of the Partnership Act to govern corporations would be to extend the orbit of the Partnership Act beyond the subject matter expressed by its title.

Article IV, Section 24 of the Michigan Constitution of 1963 provides in pertinent part that:

"No law shall embrace more than one object, which shall be expressed in its 'title.' . . ."

The basic differences between partnerships and corporations are well set forth at 40 *American Jurisprudence* "Partnership," § 6:

"A partnership is a relationship between two or more persons based on a contract between them to place their property or labor in lawful commerce or business and to divide the profits and losses between

⁷ C.L.S. 1961 § 449.6; M.S.A. 1964 Rev. Vol. § 20.6.

⁸ Act 327, P.A. 1931, as amended, being C.L. 1948 and C.L.S. 1961 §§ 450.1 *et seq.*; M.S.A. 1963 Rev. Vol. and Supps. §§ 22.1 *et seq.*

⁹ *Attorney General v. Hill-Davis Co.*, 261 Mich. 89.

them in certain proportions, and is clearly distinguishable from a corporation, which is an artificial person created by laws as the representative of those persons who contribute to, or become holders of shares in, the property intrusted to it for a common purpose. The creation of a corporation is not within the power of the individuals who subscribe to its stock but it is the creature of positive law, and the best evidence of the existence of a corporation is the grant of corporate powers by the commonwealth. A corporation is for most purposes an entity distinct from its individual members or stockholders, who, as natural persons, are merged in the corporate identity, and who in the absence of charter, constitutional, or statutory provisions to the contrary are not liable personally for any of the obligations of the corporation whatever their character or however they may have been incurred. Each partner on the other hand is individually liable for the debts and obligations of the partnership and for the acts of his copartners so far as those acts are within the scope or apparent scope of their authority as partners. Public policy does not permit a copartnership to do business under the guise of a corporation, or allow the partners to be a corporation as to the rest of the world while as between themselves the enterprise conducted in the corporate form is in fact a joint venture or partnership.

“Another obvious and important distinction between a corporation and a partnership is that an act of a corporation, done either by direct vote or by agents authorized for the purpose, is the manifestation of the collected will of the society, and no member of the corporation as such can bind the society. But in a partnership, each member binds as a principal.”

Corporations being artificial entities created by statute, have only those powers specifically conferred by the controlling statute, and their charters under that statute.¹⁰

Foreign corporations authorized to do business in Michigan can have no greater powers than those conferred upon domestic corporations.

Sec. 94 of the General Corporations Act provides in pertinent part as follows:

“. . . such corporation shall have all the powers, rights and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations. . . .” [formed under the laws of this state.]¹¹

In *White Star Line v. Star Line of Steamers, supra*, the Michigan Supreme Court declared the public policy to be that corporations could not enter into partnerships. The General Corporations Act has not abrogated the enunciated common law as stated in that case. Domestic corporations are

¹⁰ *Dewey v. Central Car & Mfg. Co.*, 42 Mich. 399; *City of Benton Harbor v. Michigan Fuel & Light Co.*, 250 Mich. 614; *Township of Lansing v. City of Lansing*, 356 Mich. 338.

¹¹ C.L.S. 1961 § 450.94; M.S.A. 1963 Rev. Vol. § 21.95, and see *People ex rel. Glens Falls Insurance Co. v. Jackson Circuit Judge*, 21 Mich. 577.

restricted from entering into partnerships. Foreign corporations seeking authorization to do business in Michigan are equally restricted.

It is, therefore, my opinion that a foreign corporation may not be admitted to Michigan "for the purpose of forming a partnership in Michigan," since there is no authority in the Michigan General Corporation Act for a corporation, whether domestic or foreign, to form a partnership.

FRANK J. KELLEY,
Attorney General.

651028.1

COLLEGES AND UNIVERSITIES: Saginaw Bay State College – Establishment as state institution for higher education.

The Saginaw Bay state college authorized by the provisions of Act 278, P.A. 1965, shall become a state institution of higher education when its board of control has in its possession and control the sum of \$4,000,000.00, as money paid in hand, valid subscriptions, pledges and obligations which are bona fide obligations of responsible, solvent persons and are enforceable by law in the total minimum amount required by the act.

No. 4475

October 28, 1965.

Hon. Jerome T. Hart
State Senator
Lansing, Michigan
Hon. Sanford E. Charron
State Representative
Lansing, Michigan

You request my opinion on the following question:

"Whether the provisions of Act 278, P.A. of 1965, requiring the Board of Control to 'raise the sum of \$4,000,000 . . . by a method other than state and local taxation, within 120 days of the effective date,' has been met by (1) the transfer within said period of existing assets of Saginaw Valley College, which consists in part of pledges of foundations, corporations and individuals in an amount of approximately \$3,700,000, or (2) the entering into of a contract between Saginaw Bay State College and Saginaw Valley College for the future transfer of assets having a present value of in excess of \$4,000,000 (including the approximate \$3,700,000 of unpaid pledges)?"

Act 278, P.A. 1965, being M.S.A. Cur. Mat. § 15.1852(51) et seq., provides for the establishment of a state institution of higher education to be known as Saginaw Bay State College.

In Sec. 1 of the act the legislature has provided that there is established a state institution of higher education known as Saginaw Bay State College to be located in a 3-county area comprising the counties of Bay, Midland and Saginaw.