CHAPTER IV

Fraternal, Religious and Other Particular Types of Corporations

I. Coverage

SUPPLEMENTARY provisions are contained in sections 133 to 189\(^1\) of the Michigan General Corporation Act relating to the incorporation of particular types of organizations, some of which may be organized for profit as well as not for profit. These corporations are classified into six main categories as follows: (1) fraternal societies; (2) trustee corporations; (3) foundations; (4) educational corporations; (5) ecclesiastical corporations; and (6) public building corporations. In addition, there are further sections for hospitals and church trustee corporations\(^2\) as subdivisions of the trustee provisions, and a separate section provides that Sunday schools\(^3\) shall be controlled by the general nonprofit provisions and not by the ecclesiastical sections.

Many of these sections, like those providing for other types of corporations, originated with the General Act of 1921\(^4\) and were designed to eliminate and prohibit incorporation by particularized legislation.\(^5\) The provisions are designed to meet any peculiar needs of the specified organizations and are not exclusive of the preceding sections dealing generally with profit and nonprofit corporations.

\(^1\) Mich. Comp. Laws secs. 450.133 to 450.189 (1948).
The desirability of providing for the incorporation of most of these organizations may be assumed. On the other hand, however, there need be determined such issues as: whether separate provisions are really necessary; whether the sections are unnecessarily repetitious; whether they are too heterogeneous; whether they are ambiguous; and whether they are constructed in the most logical, concise, and adequate manner. This chapter will seek answers to these questions by briefly comparing and analyzing the salient features of the respective statutes.

II. Fraternal Societies

General requirements. A minimum of three incorporators is required, and a foreign parent organization must first domesticate before incorporating any state subordinate lodge or jurisdiction. The objectives of the organization may be "benevolent, charitable, social, educational or mutual aid purposes or for any other similar purpose or purposes not prohibited by law." Since the Corporation Act generally applies unless otherwise provided, it is evident that these sections are designed for the specialized problems of local incorporations of multi-unit fraternities.

Parent corporation. Specific sections are provided for state jurisdictions of foreign parent corporations. These state jurisdictions in turn are empowered to incorporate local units, prescribe the secret ritual, visit and discipline local jurisdictions, and generally supervise and regulate society affairs uniformly throughout the organization.

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7 Ibid.
8 Ibid.
The legislature has evidenced a liberal policy of non-interference in the government and functioning of the parent corporation. The statute simply states that such parent corporation shall be managed by the officers as the articles shall prescribe, and that such officials or committees shall have the powers and liabilities as prescribed in the articles or by-laws.\textsuperscript{11} A specific requirement is that the articles shall designate the original committee of the parent corporation having authority to enact the by-laws and shall state the details of its composition and functioning.\textsuperscript{12} It is also mandatory that every parent corporation shall designate a secretary whose powers and duties shall conform to those prescribed in this Act for secretaries generally.\textsuperscript{13} 

The parent corporation is prohibited from using the same name of a similar lodge or fraternity or from using a name so similar as likely to lead to confusion.\textsuperscript{14} Quite naturally, however, the local lodge is required to use the same name as the parent corporation in addition to some suitable local designation.\textsuperscript{15} The parent corporation is empowered to own real and personal property for the purpose of establishing a state headquarters and any charitable home or institution established or maintained by it.\textsuperscript{16} It is also given power to engage in any auxiliary activities necessary to accomplish these purposes.\textsuperscript{17}

It is required that every parent corporation have a representative form of government and that each subordinate


\textsuperscript{12} Ibid.

\textsuperscript{13} Ibid.


\textsuperscript{15} Ibid.

\textsuperscript{16} Mich. Comp. Laws sec. 450.139 (1948).

\textsuperscript{17} Mich. Comp. Laws sec. 450.139 (1948).
organization shall send representatives or delegates to an annual or other convention or meeting of the fraternity.\textsuperscript{18} The officers and committees of the corporation shall be elected by majority vote of the representatives at the convention.\textsuperscript{19} The first annual meeting shall be held at a time and place designated by the executive committee of the parent corporation and subsequent meetings shall be held as designated by the convention itself.\textsuperscript{20} This annual or periodic meeting of the lodge is the chief governing body and is empowered to elect officers, committees, or trustees, designate delegates to any higher jurisdiction within the lodge, alter or amend the articles or by-laws of such parent corporation, determine questions of discipline or policy, and act upon other matters as the articles or by-laws may permit or require.\textsuperscript{21}

\textit{Local lodges.} Incorporation of local lodges of state parent organizations is expressly authorized.\textsuperscript{22} As no specific number of incorporators is designated, apparently one is sufficient. The incorporators must be members in good standing of the parent organization.\textsuperscript{23} It shall be sufficient if the purposes of such local lodge are: to further the interest of the parent corporation in the community, to hold the property of such local lodge or society, and to make its members integral components of the parent lodge or society.\textsuperscript{24}

The articles shall conform to the pattern prescribed for nonprofit corporations generally and may contain such

\textsuperscript{18} Mich. Comp. Laws sec. 450.140 (1948).

\textsuperscript{19} Ibid.

\textsuperscript{20} Ibid.


\textsuperscript{22} Mich. Comp. Laws sec. 450.142 (1948).

\textsuperscript{23} Ibid.

\textsuperscript{24} Ibid.
further statements as the incorporators may wish to insert as to purposes and government.\textsuperscript{25} The articles must state that the local lodge has been granted a charter or permit from the parent corporation.\textsuperscript{26} Every such local lodge has the same right to hold and deal in real and personal property as nonprofit corporations generally,\textsuperscript{27} and they are subject to the visitation, control, and discipline of higher jurisdictions within the lodge.\textsuperscript{28} Both state and local lodges are expressly empowered to make provision for the visitation of the sick and afflicted, provide funds for relief of distressed members and families, and provide for the burial of indigent members.\textsuperscript{29} However, no such funds shall be raised by dues based on insurance rates or tables, and no such money shall be paid except in accordance with the organization's authorized procedures.\textsuperscript{30} Lodges are also empowered to establish and maintain homes or other charitable institutions for its aged, afflicted or infirm members under the provisions of the act applicable to trustee corporations.\textsuperscript{31}

\textit{Appraisal.} The secret lodge or fraternity is a specialized type of the nonprofit corporation. Apparently the chief characteristic justifying additional statutory provisions is the fraternal practice of having large national societies composed of innumerable local units. The local unit naturally is incorporated in the state where located but normally is subject to considerable control by the national organization which, in all probability, is incorporated in another jurisdiction. Thus, it is apparent that this prac-

\textsuperscript{25} Mich. Comp. Laws sec. 450.143 (1948).
\textsuperscript{26} Ibid.
\textsuperscript{27} Ibid. sec. 450.144 (1948).
\textsuperscript{28} Ibid.
\textsuperscript{29} Ibid. sec. 450.147 (1948).
\textsuperscript{30} Ibid.
\textsuperscript{31} Ibid.
tice, if approved, should be officially sanctioned by statute. Likewise, the state may find it desirable to enact provisions giving it a minimum of control over the national organization.

The present Michigan statutes contain five sections\(^{32}\) in the general nonprofit sections\(^{33}\) dealing specifically with multi-unit fraternal organizations. It is apparent that many organizations other than fraternal societies operate on a regional, national or international basis by means of numerous local units. Churches, patriotic organizations, veterans’ associations, agricultural societies, labor organizations, university alumni associations, and charitable drives and foundations are but a few examples of nonfraternal organizations operating on a similar basis. As detailed provisions for each of the divergent organizations are undesirable, the obvious solution is to expand and broaden the general nonprofit sections and reduce the specific ones. This is the procedure adopted in the proposed Act.\(^{34}\) Additional recommendations are delineated in the explanatory notes to that Act.

The provision of section 133\(^ {35}\) concerning foreign corporations can be clarified. This section should be so worded as to leave no doubt that the parent corporation must domesticate whenever in fact a local unit is incorporated as an affiliate. Further, the statutes should be broadened to permit incorporation of local units of a foreign parent corporation without the necessity of first incorporating a state parent organization.\(^ {36}\) The limitation\(^ {37}\) on the right to hold and deal in property can certainly work no

\(^{32}\) Mich. Comp. Laws secs. 450.128 to 450.132a (1948).


\(^{34}\) Part II, Proposed Act, secs. 236 to 248.


\(^{36}\) Part II, Proposed Act, sec. 244.

hardship on the organization or its members and can be justified from a policy viewpoint. The requirement of a representative form of government would seldom give rise to any objections since most fraternal organizations operate on such a plan anyway. In the few instances in which a dictatorial group might usurp control, the statute stands as a bulwark of protection for the members. This restriction limited to fraternal organizations is retained in the proposed Act.

Provisions for the incorporation of local lodges add practically no new restrictions or authorizations not found in preceding sections. The only new limitation is that funds for the relief of distressed members shall not be raised by contributions based on insurance rates. This is a necessary precaution since the insurance business is properly state regulated.

III. Trustee Corporations

The first eight sections of the trustee provisions provide generally for trustee incorporations while the remaining sections cover some particular types of trustee organizations. The general sections in broad terms provide for the incorporation of the following classes of trustees: (1) trustees holding property for religious, charitable, benevolent, or educational institutions, or for any purposes of public benefaction; (2) trustees of existing corporations holding separate corporate property for specific eleemosynary purposes; and (3) trustees of a private trust. These corporations embrace both charitable and private

purpose trusts and both profit and nonprofit classifications.\footnote{Mich. Comp. Laws sec. 450.148 (1948). Wilgus, "The New Michigan Corporation Law," 1 Mich. S. B. J. xxv, xxviii (1921).} Declarations of trust are not of themselves sufficient to authorize the trustees to assume corporate powers, but all trustees desiring corporate powers must formally incorporate under the provisions of the Act.\footnote{Mich. Comp. Laws sec. 450.148 (1948).} Quite naturally, the trustees are prohibited from having any personal interest in the trust property except compensation for their labor and skill, reimbursement for actual expenses, and authority expressed in the original trust instrument.\footnote{\textit{Ibid.}}

\textit{Additional requirements.} Incorporation of trustees is authorized if there are three or more trustees who receive annual income in trust amounting to $1000 or more, or if they hold trust property worth $1000 or more.\footnote{\textit{Ibid.}} Trust instrument is defined broadly to include "any lawful deed of gift, grant, agreement, or any last will and testament by which the donor, grantor, or testator shall give, grant, devise, or bequeath any property, real, personal or mixed, in trust for general or specific uses."\footnote{Mich. Comp. Laws sec. 450.149 (1948).} Lawful directions or conditions contained in such instrument of trust shall be effective. Constructive or resulting trusts are not included within the purview of these sections.\footnote{\textit{Ibid.}}

The articles of incorporation, in addition to other requirements of the Act, shall contain verified copies of every trust instrument on which such trust is founded, and shall state: (a) the nature of the business, if any, in which such corporation is engaged, and the nature and value of the trust property; (b) the number of persons who shall constitute the permanent board of trustees, their...
term of office, and the mode in which their successors shall be appointed or elected; and (c) whether or not other persons than the incorporators are, or may become, members or stockholders thereof.\textsuperscript{49}

Trustee corporations are given the same powers and rights as accorded corporations generally,\textsuperscript{50} but the trust instrument can set up different requirements or regulations.\textsuperscript{51} Trustees may be either elected or appointed as provided in the trust instrument.\textsuperscript{52} These corporations are empowered to accept property from others than the original donors unless such action is prohibited in the trust instrument.\textsuperscript{53} Also, two or more persons may unite in creating the trust by transferring property to the same trustees, but, of course, trustees of an existing corporation are forbidden to accept further gifts inconsistent with the terms of the original grant.\textsuperscript{54}

The trustees are held to the same degree of accountability as if they were not incorporated, except where the trust instrument sets forth a lesser degree of accountability or where the trustees are subject to the control of shareholders in their corporation.\textsuperscript{55} If the board is composed of more than five members, it may appoint executive and other committees to carry on the routine work of the corporation.\textsuperscript{56} Investment of funds, unless otherwise restricted by the trust instrument, shall be in accordance with the laws of the state governing investments by trus-

\textsuperscript{49} Mich. Comp. Laws sec. 450.150 (1948).
\textsuperscript{50} Mich. Comp. Laws sec. 450.151 (1948).
\textsuperscript{51} Ibid.
\textsuperscript{52} Ibid.
\textsuperscript{54} Ibid.
\textsuperscript{56} Ibid.
tees, and no loan of corporate funds shall be made to any of the trustees, officers, or employees of the corporation.\textsuperscript{57}

The circuit court is empowered to fill vacancies in the board of trustees where no other provisions are made,\textsuperscript{58} and is also given jurisdiction to construe any doubtful or disputed question arising from any ambiguity in the trust instrument.\textsuperscript{59} The donor may amend the trust instrument so long as such amendment does not alter the original purposes of the corporation in their entirety.\textsuperscript{60}

\textit{Hospitals and asylums.} Incorporation of hospitals or asylums as trustee corporations is authorized where land or property amounting to \$5000 or more is given to three or more trustees.\textsuperscript{61} Further, three or more persons may incorporate for such charitable purpose where the institution to be founded by such corporation is to be constructed and maintained principally by donations not made under any trust instrument, and every such corporation shall have authority to fix and prescribe the terms and conditions of membership therein.\textsuperscript{62} The trustees are empowered to indenture or apprentice to responsible persons any children under their care, and to withdraw such apprenticed or indentured children when they deem it in the interest of the child to do so.\textsuperscript{63}

Authorization is also conferred upon the board of control of any charitable institution to incorporate as a trustee corporation where the hospital or institution has been conveyed to one or more persons in trust but the manage-

\textsuperscript{57} Ibid.
\textsuperscript{58} Mich. Comp. Laws sec. 450.154 (1948).
\textsuperscript{60} Mich. Comp. Laws sec. 450.156 (1948).
\textsuperscript{62} Ibid.
\textsuperscript{63} Ibid.
ment and control has been entrusted to a board consisting of five or more persons. The trustee corporation may then receive gifts of real and personal property, and shall have power to sell and invest the funds as is provided for trustee corporations generally.

Church trustee corporations. Incorporation of associations of religious denominational congregations or societies as trustee corporations is expressly authorized. These sections are apparently designed to permit the incorporation of district organizations of all church groups such as presbyteries, diocesan conventions, dioceses, synods, conferences, and the like, or any quarterly conference of any religious denomination. The procedure for such incorporation is set out in the statutes with considerable detail.

Vacancies among the trustees resulting from the expiration of their term of office shall be filled by elections of the representative body. Other vacancies may be filled by the appointing body at any regular or special meeting called pursuant to the rules of such body. Trustees are empowered to take and hold all property transferred to them for the benefit of the religious denomination which they represent. In the management and disposition of property, they shall be governed by the terms of any instrument by which the property is given to them and by the directions of the body by whom they were elected. The trustees are given the usual powers of management of the property under their control except that they must get specific authorization from the representative body which appointed

65 Ibid.
67 Ibid.
them for the sale, mortgaging, conveyancing, or leasing of real estate for a period longer than three years.\textsuperscript{69} In the case of such conveyance, mortgage, or lease of real estate, the trustees must file in the county recorder's office a copy of such authorization duly certified by the secretary of the representative body, and the certificate when filed shall be prima facie evidence of the facts therein stated.\textsuperscript{70}

\textit{Appraisal}. Provisions for trustee corporations originated in Michigan with the Act of 1921.\textsuperscript{71} Similar statutes are not common in other states, but Ohio has provisions for the incorporation of charitable trusts,\textsuperscript{72} and Missouri has a provision for the incorporation of nonprofit trusts.\textsuperscript{73} Insofar as there is no express policy against incorporation of trustees, it is sound for the statutes to recognize the practice. They should, however, be as concise and nonrepetitious as adequate treatment will permit. Advantages of incorporation include more security of continued existence, a degree of state control, and limited personal liability inherent in corporate operation. Of course, unincorporated trustees can contract against personal liability, but such procedures are more cumbersome and may occasionally result in unexpected liability from oversight. Obviously, however, trustees cannot contract against tort liability. Further, it is to be noted that the statutes impose on incorporated trustees the same degree of accountability as if they were unincorporated.\textsuperscript{74} Hence, the limitation on liability in many instances will not be appreciably different.

Corporations organized under these provisions partake

\textsuperscript{69} Mich. Comp. Laws sec. 450.162 (1948).
\textsuperscript{70} Ibid.
\textsuperscript{72} Ohio Rev. Code secs. 1719.01 et seq. (Baldwin 1954).
\textsuperscript{73} Mo. Ann. Stat. sec. 352.030 (Vernon 1952).
\textsuperscript{74} Mich. Comp. Laws sec. 450.153 (1948).
of the characteristics of corporations organized under other sections. Trustee hospitals, sanitariums, or children's homes, if not run for profit, partake of the nature of nonprofit corporations generally and may even be run as an adjunct of a lodge or fraternal organization. If run for profit they should be subject to the profit corporation provisions. Trustees of a private trust operating for the sole benefit of the settlor or his designated beneficiaries would partake of the nature of a profit corporation. It would even seem to be possible under these provisions to organize a business or Massachusetts trust type of organization and then incorporate the trustees.\textsuperscript{75} The unique aspect of these organizations is simply the nature of their trust origin. The statutes, then, need contain little more than recognition of this fact.

There seems to be little justifiable criticism of the general requirements of these sections. Detailed objections and specific recommendations are reserved for the proposed Act\textsuperscript{76} and the explanatory notes thereto. There are, however, some serious objections to the special provisions contained in these sections. There is no necessity for special sections for hospitals, asylums, or other charitable institutions. The present Act provides for these institutions under two separate sections\textsuperscript{77} with divergent requirements. This is useless and confusing. Further, the power to apprentice and indenture foundling children\textsuperscript{78} should be eliminated. This not only sounds archaic and cruel, but the problem should be dealt with separately under welfare legislation. Provisions for church trustee corporations\textsuperscript{79}

\textsuperscript{76} Part II, Proposed Act, secs. 258 \textit{et seq.}
\textsuperscript{78} Mich. Comp. Laws sec. 450.157 (1948).
\textsuperscript{79} Mich. Comp. Laws secs. 450.159 \textit{et seq.} (1948).
should be included in the religious or church sections and not here. Such organizations generally originate in a manner similar to the usual nonprofit corporation rather than by a declaration of trust. Their location in these sections is illogical and confusing. Further, many of the detailed requirements and limitations should be eliminated in the interests of uniformity.

In recent years there has been considerable discussion and progress in the field of state regulation of charitable trusts. Such state regulation so far is directed primarily at the enforcement of dormant trusts so that society may be assured of obtaining the intended benefits. Antisocial activities have also received attention in recent years. The manipulation of such charities for the perpetuation of private control of industry has been demonstrated, and suspicion has been cast that such organizations, and foundations in particular, may be promoting subversive ideologies.


abuses is not recommended as a part of the corporation act. Such legislation, if determined advisable after thorough investigation, should be enacted under general welfare legislation and made applicable to unincorporated as well as incorporated organizations.

IV. FOUNDATIONS

Provisions for the incorporation of foundations are derived from an act of 1917 and are apparently unique to Michigan. In other states these charities can be incorporated under the general nonprofit provisions. They can also be organized as a trust. A minimum of three incorporators are required, but the authorized purposes are practically without restraint so long as they are directed towards the betterment of human welfare. The authorization reads: "... for the purpose of receiving and administering funds for the perpetuation of the memory of persons, preservation of objects of historical or natural interest, or for educational, charitable or religious purposes, or for public welfare." It is thus seen that the scope of the permissive purposes is indeed broad. This, however, is consistent with foundation practice of stimulating beneficial programs in divergent areas. They generally provide grants in aid without becoming obligated to sustain any particular charity. Their aim is catalytic rather than ameliorative. It is obvious, therefore,

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86 Ibid.
87 H. R. Rep. No. 2514, 82nd Cong., 2d Sess., p. 3; Comment, "Modern
that the purposes must be broadly stated both in the statutes and charter for the continuation of the foundation as presently constituted.

Foundations are given unlimited power to hold property, either in trust or absolutely, without limitation as to the amount, and to expend the income in whatever manner the trustees decide.\(^8\) The power to invest and reinvest the principal, however, is limited to the extent that such investments must be in accordance with the state laws governing investments of trustees.\(^9\) Foundations are classified as nonprofit corporations\(^{10}\) and governed by those provisions unless otherwise specified. The property and accumulations need only be used to effectuate the objects of the articles and to promote the general welfare. Admission charges to sustain the expense of maintenance are authorized if the foundation maintains a museum, park, or similar institution.\(^9\)

As is the case with other nonprofit and charitable corporations, the statutes evidence a generous policy of non-interference in the internal management and organization of the foundation. Except for specifying that the number of trustees must be between three and fifteen,\(^9\) there are no other legislative requirements as to the internal functioning of the organization. Terms and conditions of membership are controlled by the articles, and the members elect the trustees in accordance with the by-laws.\(^9\) Although a self-perpetuating board of trustees is not ex-

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\(^9\) Ibid.
\(^9\) Ibid.
\(^9\) Ibid.
pressly authorized, it is likely that such a type of organization can be provided.\textsuperscript{94} A one year term for trustees is mentioned, but the statute authorizes the by-laws to set another term.\textsuperscript{95}

Foundations are generally expected to last perpetually, and accordingly the statutes do not provide any specific procedure for dissolution. The Act does provide, however, that if a foundation cease to function, become unable to serve its purpose, or if its funds be diverted, that the legislature may provide for the winding up of its affairs and for the conservation and disposition of its property.\textsuperscript{96} Chancery dissolution under such circumstances would be preferable and less cumbersome.\textsuperscript{97}

The foundation provisions are made applicable to corporations providing scholarships for the University of Michigan and for the other publicly maintained schools or colleges of the state.\textsuperscript{98} They are likewise made applicable to corporations which lend money or give assistance to students at any of the state colleges or universities.\textsuperscript{99} Existing corporations are not required to change their charters or by-laws, but they are permitted to do so in order to conform to the Act. The rights, powers, and privileges of existing corporations are not affected by the Act, but all non-stock existing corporations for benevolent or charitable purposes are deemed foundations.\textsuperscript{100} However, the provisions of the Act do not apply to such cor-

\textsuperscript{95} Mich. Comp. Laws sec. 450.166 (1948).
\textsuperscript{97} Part II, Proposed Act, sec. 252.
\textsuperscript{100} Mich. Comp. Laws sec. 450.168 (1948).
The final provisions for foundations authorize the consolidation of corporations for student aid or scholarships to state colleges and universities. The procedure for such consolidation is extremely simple. The trustees of the corporation wishing to consolidate simply vote to transfer their property and assets to the other corporation. A two-thirds vote of the trustees is required for consolidation. A notice is then filed with the Michigan Corporation and Securities Commission, and thereupon the corporation is deemed to have surrendered its rights.

Appraisal. The present provisions evidence a very liberal attitude towards foundations and in fact give the incorporators practically unlimited discretion in setting up the organization and in providing for the disbursement of income. This is, of course, conducive to such benefactions and results in many socially desirable projects. A few observations, however, may be made. The utility of the limitation that trustees shall be elected for a term of one year unless the by-laws provide otherwise is rather elusive. It would seem preferable to recognize foundation practices frankly by specifically authorizing a self-perpetuating board and a corporation without members as is recommended in the general non-profit sections of the proposed Act. The special provisions relating to foundations providing for student aid and scholarships

101 Ibid.
103 Mich. Comp. Laws sec. 450.169 (1948). Sec. 169 provides for the filing of the notice with the Secretary of State, but such duties were transferred to the Michigan Corporation and Securities Commission by virtue of Mich. Comp. Laws sec. 451.3 (1948).
105 Part II, Proposed Act, sec. 233.
for state schools should be eliminated as unnecessary, and
the general purpose provisions broadened to authorize
scholarships to all accredited colleges and universities.\textsuperscript{106}

The desirability of unrestricted foundation activity is
primarily a question of policy. Several significant issues
have received attention in recent years. One, of course, is
the present status of tax exemption\textsuperscript{107} and the correlative
problem of using the foundation as a subterfuge for ac­
complishing private gains.\textsuperscript{108} The tax angle is primarily a
question for the Federal Government and hence not
within the scope of state statutes. Some suggestions have
been made.\textsuperscript{109} To some extent, however, the state might be
able to control foundation practices so as to mitigate pri­
vate manipulations for strictly private objectives. Public
supervision of charitable organizations of this type in gen­
eral has been proposed and could be worked out on a state
level.\textsuperscript{110} As in the case of trustee corporations, however,
and for the same reasons,\textsuperscript{111} such regulation is not herein
recommended.

\textsuperscript{106} Part II, Proposed Act, sec. 270.
\textsuperscript{107} Latcham, “Private Charitable Foundations: Some Tax and Policy
Implications,” 98 U. OF PA. L. REV. 617 (1950); Comment, “Modern
Philanthropic Foundation: Critique and Proposal,” 59 YALE L. J. 477
(1950).
\textsuperscript{108} Ibid.
\textsuperscript{109} Ibid.
\textsuperscript{110} Bogert, “Proposed Legislation Regarding State Supervision of Charities,” 52 MICH. L. REV. 633 (1954); Bogert, “Recent Developments Re­
garding the Law of Charitable Donations and Charitable Trusts,” 5
HASTINGS L. J. 95 (1954); Bogert, “The Nathan Report and the Supervi­sion
and Enforcement of Charitable Trusts,” 29 N. Y. U. L. REV. 1069
(1954); Latcham, \textit{op. cit. supra}, n. 107; Comment, “Supervision of
Charitable Trusts,” 21 U. OF CHI. L. REV. 118 (1953); Comment, “Modern
Philanthropic Foundation: Critique and Proposal,” 59 YALE L. J. 477
(1950); Comment, “Recommending State Supervision of Charitable
Trusts,” 23 IND. L. J. 141 (1948); Note, “State Supervision of the Ad­
\textsuperscript{111} Supra, pp. 93–94.
V. Educational Corporations

Educational institutions may be organized either as profit corporations or as trustee corporations, and trustee corporations, in turn, embrace both charitable and private purpose trusts. Hence, it is logically required that educational corporations also comply with either the profit or trustee sections. Obviously, also, the nonprofit sections must apply to those educational corporations not organized for profit.

Educational corporations are classified according to their capitalization and according to their lay or religious sponsorship. The smallest authorized capitalization is $100,000, the upper limit on this class being $500,000. The next classification starts at $500,000, and the third at $1,000,000. Corporations of this third class have authority to establish colleges or universities of graduate rank with academic programs of five years or more. Corporations of the intermediate class are authorized to conduct regular colleges or preparatory schools, while those in the lower class may conduct junior colleges, seminaries, and preparatory schools. Denominational corporations may enjoy the privileges provided for corporations of the above classes when they satisfy the requirements of those respective classes.

It is required as a condition precedent to the filing of the articles of incorporation that every educational in-

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117 Ibid.
119 Ibid.
120 Ibid.
stitution present a written certification by the State Board of Education that the proposed corporation has proper housing, adequate educational plan, adequate library and plant, proper staff, and at least fifty per cent of its capital reduced to possession.\textsuperscript{121} It is further provided that no educational corporation can expand beyond the program specified in its articles unless it presents to the Michigan Corporation and Securities Commission an approval by the State Board of Education.\textsuperscript{122}

\textit{Additional Regulations}. The articles must set forth the type of institution to be founded and the character of degrees to be offered.\textsuperscript{123} In cases of colleges or universities, the articles must set forth how many faculties are to be established and, if a religious school, the denomination supporting it.\textsuperscript{124} A corporation may move to a higher classification on increasing its assets and amending its articles.\textsuperscript{125} Articles are to be filed in accordance with section five of the General Act.\textsuperscript{126}

The directors or trustees are empowered to accept gifts of real and personal property without limitation as to amount.\textsuperscript{127} Such gifts shall be disposed of in accordance with the donor’s instructions or, in the absence of such instructions, according to the articles or by-laws of the corporation.\textsuperscript{128} The control of business and secular affairs of every educational corporation shall be vested in a board of directors or trustees.\textsuperscript{129} This board shall have exclusive control over the educational affairs and policy of the in-

\textsuperscript{121} Mich. Comp. Laws sec. 450.171 (1948).
\textsuperscript{122} Mich. Comp. Laws sec. 450.171 (1948).
\textsuperscript{124} Ibid.
\textsuperscript{125} Ibid.
\textsuperscript{128} Ibid.
\textsuperscript{129} Mich. Comp. Laws sec. 450.175 (1948).
stitution, including specifically the powers to (1) employ faculties and officials; (2) prescribe courses of study, rules of discipline, and fix tuition; (3) grant diplomas, certificates of graduation, or honors and degrees as contemplated in the articles or warranted by the nature of the institution; (4) delegate to various officials or faculty members such authority as the board may deem advisable; and (5) cooperate with other schools and educational institutions to promote the best interests of education. 130

The lawful recipient of every diploma or certificate shall be entitled to the privileges and immunities which by custom or tradition are allowed to holders of similar diplomas or certificates granted by similar institutions in this country, except that in case of a statutorily regulated profession, no such diploma or certificate will entitle the holder to engage in practice until he has complied with the statutory requirements or qualifications. 131

Every educational corporation shall be visited and inspected at least once every three years by the State Board of Education. 132 The inspectors shall then publish a report of their findings and file it with the Michigan Corporation and Securities Commission. Upon evidence that any corporation is not complying with the law, it shall be served with notice to remedy the defect, and, in case the deficiency is not remedied, proceedings at law shall be brought for the dissolution of such corporation. 133 It is also provided that the trustees shall file an annual report designating the school's officials and faculty, financial position, and other information tending to depict its conditions and operations. 134

130 Ibid.
133 Ibid.
134 Ibid.
Appraisal. The provisions for educational corporations deal primarily with matters peculiar to this type of corporation and are, therefore, not unduly repetitious. Furthermore, this type of corporation is sufficiently distinct so that there should be little doubt as to what corporations are subject to these provisions. Regular corporate matters are governed by the trustee, nonprofit, or profit sections of the General Act as the case may be. Education is obviously a matter of public concern, and hence regulations beyond routine corporate functioning are justified.

Classification of educational corporations according to their assets with corresponding restrictions on their academic programs is a reasonable and salutary measure. It is obviously desirable to provide some assurances that the proposed institution has adequate resources to carry out its contemplated program. The minimum requirements might appear unreasonably low, but additional safeguards are provided by requiring approval by the State Board of Education. This assures the desirable flexibility without sacrificing adequate regulation.

It is believed that on the whole the requirements pertaining to educational corporations are adequate, not unduly burdensome or cumbersome, and serve a useful purpose. Limitations on the amount of gifts or property permitted these corporations are wisely omitted. Recommended changes are concerned primarily with re-arrangement to improve clarity and consistency in relation to the rest of the Act.135

VI. Ecclesiastical Corporations

Provisions for the incorporation of ecclesiastical organizations under the present Michigan Act apply only to

135 Part II, Proposed Act, secs. 274 et seq.
church and similar denominational units.\textsuperscript{136} Sunday schools and other subordinate societies are governed by the ordinary nonprofit sections,\textsuperscript{137} whereas church governing bodies operating at the higher level are controlled by the church trustee provisions\textsuperscript{138} of the trustee corporate sections. This division is awkward and confusing. The proposed Act\textsuperscript{139} more logically designates all of these organizations as religious corporations and classifies them according to their level of operation.

\textit{Requirements}. Three incorporators are required.\textsuperscript{140} A model form for the articles set out in section 179\textsuperscript{141} facilitates the work of the organizer. Similar models are not supplied in the statutes for other corporations. Article requirements are fairly simple, the information consisting chiefly of the following: (1) the name of the corporation which must clearly indicate that it is a religious association; (2) the location of the church; (3) the duration for which it shall be created; and (4) the religious doctrine or principles to which the organization shall adhere.\textsuperscript{142} Execution and filing of the articles shall be in accord with section 5 of the Act as is the case with corporations generally.\textsuperscript{143}

Consistent with the general legislative policy of non-interference in internal government and organization, very few restrictions are imposed on either the articles or by-laws. General prohibitions assert that a religious corporation shall not be used to circumvent public policy,

\textsuperscript{139} Part II, Proposed Act, sec. 285.
\textsuperscript{140} Mich. Comp. Laws sec. 450.178 (1948).
\textsuperscript{141} Mich. Comp. Laws sec. 450.179 (1948).
\textsuperscript{142} Ibid.
\textsuperscript{143} Ibid.
teach immoral practices, violate the sanctity of marital relations, disregard any federal or state law, acquire property through fraud, misrepresentation, or undue influence, deprive a member of his right to appeal to the courts, allow an official to hold corporate property in his own name, or allow an individual to exercise too much control over the by-laws and regulations.\textsuperscript{144} Otherwise the corporation is free to decide the form of government and adopt by-laws prescribing the following: the qualifications of members, their manner of admission, suspension and expulsion; the number and titles of the persons who control the temporal affairs, their term of office, manner of selection and removal; the time and manner of calling and holding church business meetings; the number of members constituting a quorum; the degree of control exercised by a higher church body; the manner of acquiring, holding, and disposing of real and personal property; and any other provisions deemed necessary for the management of such corporation.\textsuperscript{145} The by-laws may also contain provisions for their amendment or repeal.\textsuperscript{146}

In the event that the corporation has exceeded its powers or abused its privileges by practicing or permitting any of the proscribed conduct, as, for example, the teaching of immoral practices, the attorney general may, in either a pending quo warranto or a separate proceeding, apply to the circuit court for the appointment of a receiver.\textsuperscript{147} Substantial donors and other claimants may then

file claims seeking restitution. Any surplus funds not distributed to claimants shall escheat to the state. Provision for chancery dissolution is sound, but a statutory cy pres doctrine rather than escheat is recommended.

Amendment. Amendment of the articles is governed by section 182. They can be amended at any meeting called for that purpose. Since the statutes contain no requirements as to the calling of such meetings, this matter can be regulated by the by-laws. Undoubtedly, concepts of notice and fair play could be judicially imposed. This is inferentially recognized in the statute which requires the certificate of amendment to contain a copy of the call of the meeting. An affirmative vote of a majority of the members present at the meeting and entitled to vote is required for passage. However, a different majority may be required if provided by the rules of discipline or church policy in a particular case. A certificate of amendment shall be signed and acknowledged in the same manner as the original articles, and filed in triplicate pursuant to section 5 for original filing. The contents of the certificate of amendment are specified in the statute. The amendment usually shall become effective upon filing, but if the government of a particular church requires the approval of a higher body, then the amendment must conform to such practice. The statutes can be simplified by providing amendment procedures under the general nonprofit

146 Ibid.
149 Part II, Proposed Act, secs. 253 and 254.
151 Ibid.
152 Ibid.
153 Ibid.
154 Ibid.
155 Ibid.
156 Ibid.
provisions and making them applicable to all of the special types of nonprofit corporations.\textsuperscript{157}

Property. Ecclesiastical corporations are given broad powers to acquire, hold, sell, and convey both real and personal property.\textsuperscript{158} A provision denying the corporation the right to recover property or debts obtained by fraud or undue influence\textsuperscript{159} would seem superfluous, as no court would permit such action anyway. Specific authority is granted in one section\textsuperscript{160} to sell, mortgage, and encumber both real and personal property. Express approval is granted for the acquisition of a pastorate, cemetery, and church and Sunday school buildings.\textsuperscript{161} This normally would seem to be unnecessary in view of the prior rather broad grant of authority in relation to property. The provision, however, may be explained. It apparently prohibits, at least by inference, such corporations from acquiring and maintaining any real estate not used in the immediate furtherance of the corporation’s activities. It is, therefore, in accord with the spirit of the constitutional provision\textsuperscript{162} limiting the power of corporations to hold unused real estate for a period of ten years.

An element of ambiguity is introduced by the provision that “the right to sell, convey or mortgage such real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, articles or by-laws pertaining to each such corporation. . . .”\textsuperscript{163} Since this restriction follows closely the grant of authority to ac-

\textsuperscript{157} Part II, Proposed Act, sec. 249.
\textsuperscript{158} Mich. Comp. Laws sec. 450.183 (1948).
\textsuperscript{159} Ibid.
\textsuperscript{160} Ibid.
\textsuperscript{161} Ibid.
\textsuperscript{162} Mich. Const. Art. XII, sec. 5.
\textsuperscript{163} Ibid.
quire land for a pastorate, church buildings, and a cemetery, this provision is apparently limited to that kind of real property. Apparently other real estate, if any, could be sold or encumbered without regard to any special limitation contained in the by-laws or other internal regulations of the church. This provision may be justified from the viewpoint of protecting church members from a precipitous sale of their house of worship. However, it does introduce another hazard for the purchaser of such property. In addition to the usual records and aliunde matter, the purchaser must check the articles, by-laws, and rules of discipline of the vendor church. It is an added pitfall which might not be entirely justified. It would be preferable to have a general provision relating to all property of all nonprofit corporations. Such a uniform provision, along with the usual recording acts, should be sufficient protection for the corporate members, and it would have the added advantage of promoting security of transactions and making such property more alienable.

Gifts and Investments. Ecclesiastical corporations are authorized to receive, hold, and use gifts or bequests for special religious or social projects connected with the corporation, and may receive gifts to be invested and the income used for general charitable projects. Real estate received for special projects and not used for such purposes shall be sold within ten years and the proceeds used or invested for such purposes. This provision conforms to the constitutional prohibition against corporations holding unused real estate for a period longer than ten years. It would appear preferable to incorporate such re-

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165 Ibid.
166 Mich. Const. Art. XII, sec. 5.
striction in a more general section, thus making it applicable to all corporations, and thereby dispensing with the necessity of repeating it as to each type.

Investments must be made in accordance with the laws governing investments for trustees.\textsuperscript{167} This is a justified and reasonable restriction. The officials of the church may receive donations of money for investment upon bond and mortgage when the income is to be applied toward salary payments of the minister or similar official. The money thus invested must also be in accord with the laws governing investment of trustees.\textsuperscript{168}

The property provisions for these corporations seem to possess somewhat of a Jekyll and Hyde characteristic. On the one hand, there seem to be practically no restrictions on the acquisition, transfer, or encumbrance of property; but, on the other, the grant of specific authority in regard to certain property suggests that other powers are inferentially denied. Further, clarity is not necessarily introduced by the subsequent provision that the Act shall be liberally construed in the interest of religion and morality.\textsuperscript{169} It is recommended that a property provision be drafted for all nonprofit corporations. Such a provision should be in conformity with constitutional limitations but otherwise free from all unnecessary restrictions.\textsuperscript{170}

\textit{Appraisal.} The most obvious criticism of the present Act is the multiple treatment of religious corporations. According to their level of operation, they are governed by the church trustee provisions,\textsuperscript{171} ecclesiastical sections,\textsuperscript{172} or general nonprofit provisions.\textsuperscript{173} Since their dis-

\textsuperscript{168} Ibid.
\textsuperscript{169} Mich. Comp. Laws sec. 450.185 (1948).
\textsuperscript{170} Part II, Proposed Act, sec. 234.
\textsuperscript{172} Mich. Comp. Laws sec. 450.178 (1948).
Distinguishing characteristic is primarily their location in the religious hierarchy, they should be governed by the same provisions with specific authorization for all three types of corporations.\textsuperscript{174} Ambiguity inherent in the present statutes is not lessened by section 178\textsuperscript{175} which authorizes church units to incorporate a central organization as an ecclesiastical corporation. Such an organization might indeed be different from a conference or synod in some respects, but it could perform similar functions. Further, the present statutes make the ecclesiastical officials subject to the same liabilities as trustee corporate officials if their corporation holds any property in trust for religious or charitable purposes.\textsuperscript{176} The proposed Act unifies the provisions for religious corporations.\textsuperscript{177}

Some additional changes in the statutes are also desirable. The policy of denying the ecclesiastical corporation certain powers which, if exercised, would circumvent established state policies, as, for example, the teaching of immoral practices,\textsuperscript{178} is, of course, a justifiable limitation. It may be doubted, however, that such precaution is necessary. Pretext of religious freedom could hardly be permitted to thwart public policy. Similar prohibitions are not thought necessary in the case of other nonprofit corporations, yet they are equally susceptible of abuse. The same observation applies to the limitation on the power of the corporation to recover property or debts obtained through fraud.\textsuperscript{179} The proposed Act\textsuperscript{180} wisely omits these provisions

\textsuperscript{172} Mich. Comp. Laws sec. 450.186 (1948).
\textsuperscript{174} Part II, Proposed Act, sec. 285.
\textsuperscript{175} Mich. Comp. Laws sec. 450.178 (1948).
\textsuperscript{176} Mich. Comp. Laws sec. 450.183 (1948).
\textsuperscript{177} Part II, Proposed Act, sec. 285.
\textsuperscript{180} Part II, Proposed Act, sec. 253.
from the religious sections and makes them applicable to all of these special types of corporations.

The provisions granting powers in relation to property should be clarified by removing all sections which might suggest some limitation on the power of the corporation to deal with any specific kind of property. Limitations on capitalization are wisely omitted. Similar limitations on property transactions, even by innuendo, should be removed. The interest of the state in such property transactions is rather remote, and the accountability of the church officials to their membership along with ordinary civil and criminal remedies available to aggrieved persons should be sufficient protection for everybody. A general authorization for property transactions, consistent with constitutional provisions, and applicable to all nonprofit corporations should be sufficient.

VII. Public Building Corporations

The incorporation of public building organizations as nonprofit corporations was authorized by a 1947 act of the Michigan legislature. The purpose of such corporations is the construction, operation, and maintenance of office buildings for the State of Michigan. A precautionary provision requires a legislative approval by concurrent resolution before any contract or contracts shall become effective between such corporation and the state administrative board.

Public building corporations are empowered to receive,
purchase, and manage property without limitation as to amount unless the legislature subsequently imposes such limitations. Naturally, the corporation is empowered to enter into contracts and leases with the State of Michigan, and is empowered to borrow money and issue revenue bonds for repayment. The only restriction on such powers to deal with property and borrow money is that the by-laws authorize such action or that the trustees authorize it by resolution at any duly called meeting at which a quorum is present. This is really no limitation at all but is reasonable so long as such corporations are authorized.

Public building corporations are nonprofit corporations and subject to those provisions of the General Corporation Act except as otherwise specifically provided. All property and funds of these corporations are to be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the State. Such corporations are specifically authorized to charge the State rent to pay the cost of construction and maintenance of the office buildings.

The trustees shall provide in the articles the terms and manner in which members may be admitted. The governing board shall consist of not less than three nor more than nine trustees, to be elected by the members as provided by the by-laws. Trustees shall serve for a term of six years or for such other period as the by-laws shall de-

187 Ibid.
188 Ibid.
190 Ibid.
191 Ibid.
193 Ibid.
termine and until their successors are elected and qualified.\textsuperscript{194} The designation of a six year term is thus without significance, since the by-laws may provide otherwise. No such trustee shall receive any compensation for his services as such.\textsuperscript{195} In case the corporation ceases to operate or becomes unable to serve usefully the purpose of its organization, the legislature may provide for the winding up of its affairs and disposition of its property in such a way as may best promote and perpetuate the purposes for which such corporation was originally organized.\textsuperscript{196}

\textit{Appraisal}. The specific provisions of these few sections seem sufficiently clear and definite for the accomplishment of the expressed purpose. The desirability of specifically authorizing such corporations, however, may be questioned. The whole thing seems somewhat anomalous. Private parties are authorized to set up a nonprofit corporation for the purpose of erecting buildings to be leased to the state. Such a corporation will obviously be quite different from the ordinary club, social organization, church, or usual nonprofit group. Presumably, members of this corporation will invest their money and expend efforts to erect buildings with the prospect of simply getting their money back with a modest interest. Membership in such a corporation would hardly carry with it the same personal intangible benefits as might be derived from an ecclesiastical, social, labor, educational, or cultural corporation. Granted that it is desirable to have state agencies housed in adequate buildings, is this the best way to accomplish that objective? Is not this type of corporation expanding to the limits the justifiable purposes

\textsuperscript{194} \textit{Ibid.}
\textsuperscript{195} \textit{Ibid.}
\textsuperscript{196} Mich. Comp. Laws sec. 450.186e (1948).
of nonprofit groups? Are these corporations nonprofit in the true sense of the word?

A degree of public protection is accorded by the provision that the legislature must approve all contracts\(^{197}\) and that the trustees can receive no pay for their services as such.\(^{198}\) However, the trustees can be hired as managerial officials of the corporation. Further, what would prevent an interested person from unloading property on the corporation at substantial profits? Any such profit would eventually be paid by the state as a whole. Similarly, the authorization of revenue bonds\(^{199}\) may be questioned. Does this not make it possible for a few individuals with a small amount of capital to organize a corporation, finance substantially all of the building costs through the sale of revenue bonds, pledging only the income from the property, and wind up with substantial gains to themselves? Revenue bonds of such a nonprofit public building corporation might easily have a sales appeal out of all proportion to the security offered. In short, it appears that the public building corporation is entering a field that might well be left to the usual profit corporation if the state is unable to finance a sufficient number of buildings. Competition among landlords plus any additional safeguards the legislature might wish to enact concerning the approval of leases would secure for the state reasonable rentals and at the same time preserve the property for regular taxation. The proposed Act\(^{200}\) retains the provisions simply because the Michigan legislature has already determined the policy.


\(^{200}\) Part II, Proposed Act, sec. 293.
VIII. Summation

Provisions for the special types of corporations discussed in this chapter should be retained because they all have some unique characteristics. From a policy viewpoint, the public building corporation might be questioned, but its retention is justified on the basis that the policy has already been determined. Major specific recommendations for improvement have already been made in the appraisal paragraphs discussed in this chapter in relation to each type of corporation. Additional recommendations are included in the proposed Act and the explanatory notes thereto. The proposals in general are aimed at improved clarity, consistency, conciseness and uniformity.