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## CORPORATIONS-NONPROFIT CORPORATIONS-EXPULSION OF MEMBER BY BOARD OF DIRECTORS

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CORPORATIONS—NONPROFIT CORPORATIONS—EXPULSION OF MEMBER BY BOARD OF DIRECTORS—The board of directors of defendant, a nonprofit corporation, passed a resolution that persons should not be denied membership on racial, religious or political grounds. Plaintiff, a branch member of defendant, had enacted by-laws denying Negroes admission to its group. Defendant's board declared plaintiff's by-laws were in conflict with the resolution and threatened to expel plaintiff branch if its by-laws were not amended. Plaintiff brought suit to enjoin defendant from carrying out its threat. *Held*, injunction granted. No national by-law required admission of all races to membership in branches, nor did the national directors have power to expel a branch for failure to observe a policy declared by them. *Washington Branch of American Ass'n. of University Women v. American Ass'n. of University Women*, (D.C. D.C. 1948) 79 F. Supp. 88.

The power to expel a member of a nonprofit corporation is generally conferred by statute or the articles of incorporation.<sup>1</sup> However, since the threat of expulsion

<sup>1</sup> State ex rel. Boldt v. St. Cloud Milk Producers' Ass'n., 200 Minn. 1, 273 N.W. 603 (1937)

may be necessary to enforce the by-laws and carry out the purposes of the corporation, courts will hold that the right to expel exists even though not expressly provided.<sup>2</sup> Consequently, a member may be expelled not only for violation of the articles, by-laws or rules,<sup>3</sup> but also for an act tending to the destruction of the organization, or for an offense of an infamous nature.<sup>4</sup> Still, the power to expel is not absolute, for it may be limited substantively or procedurally.<sup>5</sup> Thus a member may not be expelled if it would result in loss of its property or constitutional rights.<sup>6</sup> Similarly, although a court will not look into the merits of the controversy,<sup>7</sup> it will inquire into the procedural aspect of the expulsion<sup>8</sup> and will determine whether the by-law or rule declared violated is a valid regulation.<sup>9</sup> Plaintiff in the principal case was found not to have violated a by-law, but it might have been argued, depending upon the purposes for which defendant was formed, that plaintiff's refusal to admit Negroes was an act tending to the destruction of the organization. Even granting this argument, however, defendant could not avoid the general, if not universal, rule that the power to expel can be exercised only by the whole membership body,<sup>10</sup> unless such power is delegated to the board of directors by statute, the articles of incorporation or by-laws.<sup>11</sup> The reason for this limitation is that the ordinary office of the board of directors is to conduct the business of the organization and not to determine matters touching its constituent character.<sup>12</sup> In the case at hand, although it was within the court's jurisdiction to determine

<sup>2</sup> *Allen v. Chicago Undertakers' Ass'n.*, 232 Ill. 458, 83 N.E. 958 (1908).

<sup>3</sup> *State v. Good Will Hook & Ladder Co.*, 61 N.J.L. 507, 40 A. 570 (1898).

<sup>4</sup> *Weiss v. Musical Mutual Protective Union*, 189 Pa. 446, 42 A. 118 (1899); *Polin v. Kaplan*, 257 N.Y. 277, 177 N.E. 833 (1931).

<sup>5</sup> It has been said there are three tests of a lawful expulsion: (1) the rules and proceedings must not be contrary to natural justice; (2) the proceedings must have been free from bad faith, and (3) the expulsion must have been in accordance with the rules. Chafee, "The Internal Affairs of Associations Not for Profit," 43 HARV. L. REV. 993 (1930).

<sup>6</sup> 14 A.L.R. 1446 (1921).

<sup>7</sup> *Stevenson v. Holstein-Friesian Ass'n. of America*, (C.C.A. 2nd, 1929) 30 F. (2d) 625; *Yockel v. German American Bund*, 20 N.Y.S. (2d) 774 (1940); *Smith v. Kern County Medical Ass'n.*, 19 Cal. (2d) 263, 120 P. (2d) 874 (1942).

<sup>8</sup> The organization should give the member due notice of the charge; *Evans v. Brown*, 134 Md. 519, 107 A. 535 (1919); contra, *Bradley v. Wilson*, 138 Va. 605, 123 S.E. 273 (1924); and a fair trial: *Strong v. Minneapolis Automobile Trade Ass'n.*, 151 Minn. 406, 186 N.W. 800 (1922). But the evidence which is used need not be of a "legal" character so long as it does not violate principles of natural justice; *Harris v. Aiken*, 76 Kan. 516, 92 P. 537 (1907). In absence of rules governing expulsion procedure, the organization should follow a course of action which is reasonable and just. *Central Bus Operators, Inc. v. Central Avenue Bus Owners' Ass'n.*, 127 N.J. Eq. 144, 11 A. (2d) 732 (1940).

<sup>9</sup> The regulation must not be inconsistent with the constitution, laws or policy of the state: *Elfer v. Marine Engineers' Beneficial Ass'n.*, 179 La. 383, 154 S. 32 (1934); *State ex rel. Cuppel v. Chamber of Commerce*, 47 Wis. 670, 3 N.W. 760 (1879); or the articles of incorporation: *Taylor v. Edson*, 58 Mass. 522 (1849); nor so unreasonable as to shock ideas of right and justice: *Hussey v. Gallagher*, 61 Ga. 86 (1878).

<sup>10</sup> *State ex rel. Boldt v. St. Cloud Milk Producers' Ass'n.*, 200 Minn. 1, 273 N.W. 603 (1937).

<sup>11</sup> *Ibid.*; *Pitcher v. Board of Trade*, 121 Ill. 412, 13 N.E. 187 (1887).

<sup>12</sup> *State ex rel. Boldt v. St. Cloud Milk Producers' Ass'n.*, 200 Minn. 1, 273 N.W. 603 (1937).

whether plaintiff had violated a by-law, this determination rested on the interpretation of the term "eligible" to mean "qualified to be chosen" rather than "required to be chosen,"<sup>13</sup> a distinction which is not necessarily absolute.<sup>14</sup> In view of the prevailing policy of the courts to allow non-profit corporations organized for social, religious or moral purposes as great a degree of autonomy as possible in the management of their internal affairs, it is submitted that the court should have rested its decision solely on the ground that the board of directors, having been delegated no authority to expel branches, could not expel plaintiff.

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<sup>13</sup> "The charter authorizing the defendant association to be formed describes persons of certain educational accomplishments as being 'eligible' to membership in the corporation. The by-laws adopted by the Association, wherever mention is made of those who may be admitted to membership, either National or branch, use the term 'eligible.' If the term 'eligible' means 'required to be chosen,' the branches, as well as the National Association, must admit members without regard to race. However, 'eligible' is defined to mean 'qualified to be chosen' and is commonly accepted as giving a discretion to those making the choice." Principal case at 89.

<sup>14</sup> On rare occasions the term "eligible" will mean "requiring selection." Webster's New International Dictionary, 2d ed., p. 831 (1948).