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# CORPORATIONS-RESTRICTIONS ON HOLDING REAL ESTATE-INTERPRETATION OF MICHIGAN'S CONSTITUTIONAL RESTRICTION

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CORPORATIONS—RESTRICTIONS ON HOLDING REAL ESTATE—INTERPRETATION OF MICHIGAN'S CONSTITUTIONAL RESTRICTION—While it is now well settled that a corporation has the power to acquire and hold real estate, this power may be limited by the charter creating the corporation, by legislative enactments of a general nature,[1] or by specific constitutional provisions. When such a limitation is imposed by constitution, a problem of construction arises in interpreting it in a workable way after the social conditions motivating it have changed or disappeared.

Illustrative of one type of restriction on the right of corporations to hold land, Michigan's constitution provides:

> "No corporation shall hold any real estate for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises."[2]

This provision was interpreted for the first time in the recent case of *John Hancock Mutual Life Insurance Co. v. Ford Motor Co.*[3] Plaintiff insurance company entered into a contract with defendant to purchase land in Michigan on which to erect a housing project. Defendant's promise to convey was conditioned on the existence of plaintiff's right, *inter alia*, to own and operate the project for thirty years or more. Defendant refused to convey, stating that the quoted section of the constitution would not permit plaintiff to hold such real estate for more than ten years, since the lands were not to be "actually occupied" by plaintiff in the exercise of its franchises. In an action for specific performance of the contract, the Michigan Supreme Court ordered conveyance, saying: A corporation which uses land it has acquired for corporate purposes under its franchise, occupies such land within the meaning of the exception to the constitutional prohibition against corporate ownership of real estate for more than ten years.[4] The court took judicial notice of, and was clearly impressed by, the present housing shortage in Michigan, the large amounts of capital required to alleviate the condition, the fact that such large sums are usually obtainable only from corporations having capital to invest, and the probable hesitancy of corporations to invest in housing if their right to hold such property were limited to ten years.

[1] 13 AM. JUR., Corps., §§775, 778 (1938).
[2] Michigan Constitution, art. 12, §5 (1908).
[3] 322 Mich. 209, 33 N.W. (2d) 763 (1948).
[4] Id. at 210.

### *1. Interpretation of the Restriction*

*a. Historical aspects.* Constitutional and statutory restrictions on the power of corporations to hold real estate are lineal descendants of the old mortmain statutes of England.[5] That these statutes have never been considered part of the law of Michigan is indicated by the language of cases both before and after adoption of the constitutional provision now under consideration.[6] The survival of the restrictions has been attributed to a persistence, in this field at least, of an inherent distrust of corporations, originating in the days when society was primarily agrarian. This distrust was based principally upon the monopolistic tendencies of corporations, and entered into the political thinking of the drafters of both federal and state constitutions.[7] Although wide-spread adoption of the general corporation act, with its inhibiting effect upon monopoly, set many of these fears at rest,[8] the distrust of corporate power still existed during the middle of the nineteenth century when the Michigan constitutional limitation was first adopted.[9] Evidence of these early fears remains impressed upon Michigan statute books today.[10]

Nevertheless, a review of the later cases and statutes[11] clearly indicates a subsidence of early distrust and a change of legislative and judicial policy to acceptance of the corporation as a necessary and desirable

[5] "The prime object of the mortmain acts was to repress the alarming influence of ecclesiastical corporations which had, even as early as the Norman conquest, monopolized so much of the land in England." Two objects only were contemplated by the acts: first, to prevent withdrawal of feudal services in defense of the realm, and second, to secure to the lords and crown their escheats and other privileges and profits. Lathrop v. Commercial Bank, 8 Dana (38 Ky.) 114 at 122, 124, 33 Am. Dec. 481 (1839); quoted in 19 C.J.S., Corps., §1089, n. 75 (1947).

[6] Bank of Michigan v. Niles, 1 Doug (Mich.) 401, 407, 41 Am. Dec. 575 (1844) (decided before the constitutional provision). The mortmain statutes forbade a corporation to acquire or hold land other than under a license granted to it by the crown or parliament. McDonogh v. Murdock, 15 How. (15 U.S.) 367 at 405 (1853). In 1872, the Michigan Supreme Court held that where a corporation is created in one state with powers to take, hold and convey lands in another state where the legislature had not expressly or by implication forbidden it, an affirmative enabling act by the latter state was not necessary. Thompson v. Waters, 25 Mich. 214 at 215, 12 Am. Rep. 243 (1872). Had the mortmain statutes been in effect in Michigan, such a ruling could not have been made.

[7] 1 FLETCHER, CYC. CORP., perm. ed., pp. 7 et seq. (1931).

[8] Ibid.

[9] The provision first appeared in the Constitution of 1850. It was subsequently re-adopted without change in 1867, and again with a slight modification in 1908. See principal case at 223 et seq. See also the language in Thompson v. Waters, 25 Mich. 214 at 228, 12 Am. Rep. 243 (1872); cited by dissent in principal case at 214.

[10] Cf. the rigid restrictions on rights of banks and insurance companies to hold real estate; 17 Mich. Comp. Laws (1948) §§487.37, 511.10.

[11] E.g., Stott v. Stott Realty Co., 246 Mich. 261, 224 N.W. 621 (1924); Mich. Gen. Corp. Act, Mich Comp. Laws (1948) §450.1.

element of society. This change of attitude opened the way for a narrow construction of the constitutional limitation.

*b. Canons of construction.* It is a general rule that the language of a constitutional provision should be given its natural significance, unless to do so would contravene the manifest intention of the framers.[12] It is only when a constitutional provision is ambiguous that extrinsic matters will be considered in construing it;[13] when this is the case, an interpretation should be adopted which carries out the broad general principles of government stated in the document and gives effect to the intent and purpose of the framers and those who adopted it.[14]

A minority of the court in the *Hancock* case, evidently feeling that there was no ambiguity in the restrictive clause, looked to the instrument alone for the intent and purpose of the framers. They felt that the intent of the framers had been expressed by previously enunciated interpretations of the words "actually occupied," to the effect that a corporation could not "actually occupy" portions of buildings or parts of real estate rented to third parties. Therefore, the minority concluded that an insurance company could not own and operate a housing project for more than ten years under the restrictions imposed by the constitution.

The majority, however, without mentioning ambiguity, looked beyond the instrument to the proceedings of the constitutional conventions for the intent of the framers. Interpreting the constitutional restriction in the light of that intent, they decided an insurance company could hold a housing project for more than ten years. Since no mention is made of ambiguity, the majority must have found that to give the words their natural meanings would contravene the intention of the framers.

The word "occupy," in its legal application, is ordinarily thought of as synonymous with "possession," though the cases indicate that no universal legal definition may be successfully attached to it.[15] The word "actually" is commonly understood to mean, "as an actual or existing fact, not 'constructively.' "[16] The use of the word in conjunction with "occupied" literally precludes a "constructive" occupancy. Adopting the Michigan concept of the nature of a corporation as a being artificial but nonetheless real,[17] and the necessary consequence that its "realness" must be found in the natural persons and tangible property associated

[12] 16 C.J.S., Con. Law, §19 (1947).
[13] Id., §29.
[14] Id., §16.
[15] See 29 WORDS & PHRASES, perm. ed., pp. 125 et seq. (1946); principal case at 216 et seq.; Eads v. Brazelton, 22 Ark. 499, 79 Am. Dec. 88 (1861); 51 C.J.S., Landlord and Tenant, §2, n. 32 (1947), citing Morrill v. Machman, 24 Mich. 279, 9 Am. Rep. 124 (1872).
[16] 2 WORDS & PHRASES, perm ed., pp. 205-208 (1946).
[17] WILGUS & HAMILTON, MICHIGAN GENERAL CORPORATION ACT 4 (1932).

with it, the "actuality" of occupation by the corporation must rest on some degree of occupancy by its officers, agents or employees.

In seeking the degree of "occupancy" intended by the framers of the Michigan constitution, two alternatives are immediately apparent. It might be held that they contemplated the imposition of a restriction which would prevent a corporation from holding land for more than ten years except that which was under the exclusive control of the officers, agents and employees of the corporation. This was evidently the opinion of the minority of the Michigan court. The consequences of such an interpretation, however, would be far-reaching. Under Michigan law a corporation may be properly organized to purchase, hold, sell and deal in real estate.[18] The Michigan Supreme Court has held, in interpreting the powers of such corporations, that the erection of buildings for income purposes was fairly included within their franchises.[19] Many corporation-owned buildings, constructed primarily to house corporate administrative units, either in anticipation of future expansion[20] or as an out-and-out investment,[21] today contain office and service space occupied by lessees. Had the court adopted this construction of the restriction, such holdings would have had to be disposed of.

On the other hand, it might be found that the framers meant something less than "exclusive" occupancy or possession when they used the words "actually occupied." They could not have intended, for example, to virtually prohibit profitable utilization of surplus space provided in anticipation of future expansion, by requiring a corporation unable to forecast accurately future business trends to forfeit its entire holding at the end of ten years. Necessarily, some lesser degree of occupancy must have been intended; therefore a latent ambiguity existed which permitted the court to look to extrinsic matters in its determination. This, it is suggested, is the process followed by the majority of the Michigan court in the principal case. Looking to the debates of the constitutional conventions, the court found that the framers intended "actually occupied" to be the equivalent of "used or needed."[22] While the debates may bear out the finding of the court, it must be remarked that such an interpretation convicts the framers of a less than careful choice of language, the usual presumption of constitutional construction to the contrary notwithstanding.[23]

[18] Stott v. Stott Realty Co., 246 Mich. 261, 224 N.W. 621 (1929).
[19] Ibid.
[20] People ex rel. Moloney v. Pullman's Palace Car Co., 175 Ill. 125, 51 N.E. 664 (1898).
[21] Note 18, supra.
[22] Principal case at 228.
[23] 16 C.J.S., Con. Law, §14, n. 27 (1947).

*2. What Is Left of the Restriction?*

The question remains as to what, if any, restriction on the right of a corporation to hold land for a period greater than ten years remains in the Michigan constitution under this interpretation.

It is a general rule that a corporation has only such powers as are expressly granted in its charter or in the statutes under which it is created, or such powers as are necessary for the purpose of carrying out its express powers and the object of its incorporation.[24] These implied powers are not limited to such as are indispensable for these purposes, but comprise all that are appropriate and suitable, including the right of reasonable choice of means to be employed. Further, acts which, standing alone or engaged in as a business, would be beyond the powers of the corporation are not necessarily ultra vires when they are merely a part of an entire transaction which in its general scope is within the corporate purpose.[25]

Any holding of land for a proper business purpose is permissible under the Michigan General Corporation Act.[26] Under the decision of the principal case, such land may be held for the life of the corporation, provided only that the land is used or needed in carrying out the corporate franchises. In view of the broad powers now written into corporate charters, it is submitted that under the language of the decision, if not on the facts, there is no "limit" left in whatever limitation the framers intended when they wrote: "No corporation shall hold any real estate for a longer period than ten years, except. . . ." The case is further proof that the constitution is what the judges say it is.

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[24] 13 AM. JUR., Corps. §739 (1938).
[25] Id., §740.
[26] Mich. Comp. Laws (1948) §450.10(d).