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CORPORATIONS-RESIDENCE OF DOMESTIC CORPORATION FOR PURPOSE OF VENUE ESTABLISHED BY LOCATION FIXED IN ARTICLES OF INCORPORATION

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CORPORATIONS—RESIDENCE OF DOMESTIC CORPORATION FOR PURPOSE OF VENUE ESTABLISHED BY LOCATION FIXED IN ARTICLES OF INCORPORATION—*M* Village in which *D* corporation conducted its business was partially in *X* County and partially in *Y* County. The county line bisected the village close to *D*'s location, and in filing its articles of incorporation *D* had designated *M* Village, *Y* County as its residence. In fact, *D*'s property and office were located in *X* County and when *P* began a suit against it in *Y* County, *D* moved to dismiss upon the ground that under the applicable statute¹ *D* could be sued only in the county where it resided. *P* argued that *D* had at least a de jure residence at the location fixed in its articles of incorporation. *Held*, for *P*. *Higgins v. Hampshire Products, Inc.*, (Mich. 1948) 30 N.W. (2d) 390 (1948).

For many purposes domestic corporations are now deemed to have a residence at some place in the state.² Generally such residence is considered to be where the principal office or place of business is located.³ Normally the physical situs of such principal location and the business address named in the articles of incorporation coincide. Occasionally, through mistake⁴ or design,⁵ the address

¹ Mich. Stat. Ann. (1938) 27.641 (2): "All actions . . . shall be commenced . . . in the county where one [1] of the parties shall reside." *P* was not a resident of *Y* County.

² 8 FLETCHER, *CYC. CORP.*, § 4035 (1931).

³ 13 AM. JUR., *Corporations*, § 148.

⁴ A corporation may change its physical location and through oversight make no change in the address originally fixed in its articles, *In re Federal Contracting Co.*, (C.C.A. 7th, 1914) 212 F. 688. In the instant decision there seemed to have been some actual difficulty in physically locating the county line.

⁵ Frequently, a corporation has fixed its residence in its articles at a point where it has no office or business in order to obtain a lower tax rate, *Union Steamboat Co. v. Buffalo*, 82 N.Y. 351 (1880), and cases cited, notes 6 and 7.

given in the articles is not that where the corporation's chief business office is physically located. Determination of which of the two, record address or physical location, then governs the corporate residence is influenced by the purpose necessitating the finding. With respect to residence for taxation the courts are about evenly divided, some holding that the location given in the articles conclusively establishes corporate residence,⁶ others holding it to be a factual question to be ascertained by reference to actual physical location.⁷ As to matters for which third persons would normally have occasion to examine the public records to determine the corporate residence there is a tendency to hold that the residence fixed by the articles of incorporation is conclusive. Thus, with respect to the recordation of chattel mortgages,⁸ conditional sales contracts,⁹ and for the venue of actions,¹⁰ the location designated in the articles has been held to fix residence, even though the corporation had no office or place of business at the designated address. Such decisions are based on the theory that when once a corporation has fixed its address in its articles of incorporation and filed them with the appropriate public office, such address is conclusive against the corporation "as to this residence, at least for purposes necessitating a definite fixed place where creditors or the general public could have assurance of finding recorded that information which the legislature has determined they are entitled to."¹¹ Following this policy the Michigan court decided in the instant case that for the purposes of venue a corporation is a resident of the county which it designates in its properly filed articles of incorporation, regardless of where its office or business is actually located.

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⁶ *Pelton v. Northern Transp. Co.*, 37 Ohio St. 450 (1882); *State v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927); *Union Steamboat Co. v. Buffalo*, 82 N.Y. 351 (1880); *Loyd's Executorial Trustees v. Lynchburg*, 113 Va. 627, 75 S.E. 233 (1912).

⁷ *Home Fire Ins. Co. v. Benton*, 106 Ark. 552, 153 S.W. 830 (1913); *Inter-Southern Life Ins. Co. v. Milliken*, 149 Ky. 516, 149 S.W. 875 (1912); *Detroit Transp. Co. v. Board of Assessors*, 91 Mich. 382, 51 N.W. 978 (1892); *Woodsum Steamboat Co. v. Sunapee*, 74 N.H. 495, 69 A. 577 (1908).

⁸ *Fairbanks Steam Shovel Co. v. Wills*, 240 U.S. 642, 36 S.Ct. 467 (1916); *Guterman v. Rice*, (C.C.A. 1st, 1941) 121 F. (2d) 251, cert. den., 314 U.S. 680, 62 S.Ct. 181 (1941); *Sweeny v. Keystone Driller Co.*, 122 Ohio St. 16, 170 N.E. 436 (1930).

⁹ *First Nat. Bank of Everett v. Wilcox*, 72 Wash. 473, 130 P. 756 (1913).

¹⁰ *Gorman v. A. B. Leach & Co., Inc.*, (D.C. N.Y. 1926) 11 F. (2d) 454; *State v. District Court*, 191 Iowa 244, 182 N.W. 211 (1921); *State ex rel. Juvenile Shoe Corp. v. Miller*, 217 Mo. App. 16, 272 S.W. 1066 (1925); *McCarroll v. Edwards*, (Tex. Civ. App. 1929) 22 S.W. (2d) 684; *Hawk & Buck Co. v. Cassidy*, (Tex. Civ. App. 1942) 164 S.W. (2d) 245; *Contra* where the applicable statute determines venue by where the corporation is "situated"; *State ex rel. Howard Cole Co., Inc. v. Circuit Court of St. Croix County*, 178 Wis. 89, 189 N.W. 259 (1922).

¹¹ *Guterman v. Rice*, (C.C.A. 1st, 1941) 121 F. (2d) 251 at 254, cert. den., 314 U.S. 680, 62 S.Ct. 181 (1941).