

PART ONE

A CRITIQUE

CHAPTER I

The Need for Reform

I. IN PERSPECTIVE

THE twentieth century has witnessed great activity and considerable progress in the development of statutory business corporation law. State legislatures, one after the other, at first intermittently, and then with increasing rapidity, enacted modern corporation statutes.¹ After the enactment of such statutes, effort toward improvement continued unabated, with constant studies testing the legislation against the needs of a dynamic society.² This resulted in continuous improvement as state legislatures vied for leadership in corporate law. The once popular fear of the economic ogres was replaced by an attitude of solicitation.

Similar activity in the field of nonprofit corporations has been virtually nonexistent. The law review article of Professor Chafee³ more than twenty years ago is a lonely landmark in the study of the legal aspects of social organizations. Spasmodically, certain types of these nonprofit corporations have received considerable attention. Cooperatives, foundations, and educational institutions have occasionally been the objects of public interest. Usually, however, such interest has been confined to particular aspects of corporation activity or characteristics, as, for example, the merit of the applicable tax statutes,⁴ an inquiry

¹ Wright, "Current Developments in Statutory Corporation Law," 7 *MIAMI L.Q.* 1 (1952).

² See any volume of the Index to Legal Periodicals.

³ Chafee, "The Internal Affairs of Associations," 43 *HARV. L. REV.* 993 (1930).

⁴ Magill and Merrill, "The Taxable Income of Cooperatives," 49

as to whether such organizations are fostering subversive ideologies,⁵ or an investigation of whether they are guilty of other social abuses.⁶ Recently, some awakening to the over-all problem is discernible. Minnesota,⁷ Missouri,⁸ and North Carolina⁹ have enacted new general not-for-profit corporation acts, and the American Bar Association has promulgated a model act.¹⁰ On the whole, however, little has been done in formulating a uniform and simplified

MICH. L. REV. 167 (1950). For further citations on this matter see Ch. 2, n. 16, *infra*. Other aspects of cooperatives have also received attention. See "Symposium," 1954 WIS. L. REV. 533 (1954).

⁵ H. R. Rep. No. 2514, 82nd Cong., 2d Sess.; H. R. Rep. No. 2681, 83rd Cong., 2d Sess.

⁶ Bogert, "Proposed Legislation Regarding State Supervision of Charities," 52 MICH. L. REV. 633 (1954); Bogert, "Recent Developments Regarding 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); Latham, "Private Charitable Foundations: Some Tax and Policy Implications," 98 U. OF PA. L. REV. 617 (1950); 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 Administration of Charitable Trusts," 47 COL. L. REV. 659 (1947).

⁷ Minn. Stat. Ann. secs. 317.02 *et seq.* (West Supp. 1953).

⁸ Mo. Ann. Stat. secs. 355.010 *et seq.* (Vernon Supp. 1954).

⁹ Senate Bill 46, providing for a new chapter in the General Statutes of North Carolina to be designated as chapter 55A, providing for the organization, operation, and regulation of nonprofit corporations, was enacted into law by the 1955 session of the General Assembly of North Carolina. This Act will become effective on July 1, 1957, according to information obtained from personal correspondence, dated July 26, 1955, with the Honorable Thad Eure, Secretary of State of North Carolina. An examination of Senate Bill 46 leads to the conclusion that the North Carolina legislation follows the general pattern of the A. B. A. Model Act, *infra*. n. 10. The North Carolina Act is not hereinafter cited owing to the lack of an official copy of the legislation at the time this material was prepared for publication.

¹⁰ Model Non-Profit Corporation Act (1951).

statute regulating the incorporation procedure of these multifarious organizations.

The diversity of treatment in the various states is startling. In some jurisdictions, such as New York¹¹ and Illinois,¹² a completely separate and independent act is provided for nonprofit corporations. In other states, such as Michigan¹³ and California,¹⁴ general nonprofit sections are included as a part of the general corporation act. In all of the states, however, whatever the general treatment, there is also a number of particular acts relating to specific types of nonprofit corporations.

In California the number of particular acts is rather limited. Provisions are added to the business act for nonprofit corporations generally,¹⁵ corporations sole,¹⁶ corporations for charitable or eleemosynary purposes,¹⁷ trust funds,¹⁸ and societies for the prevention of cruelty to children and animals.¹⁹ In addition, there are special acts for the incorporation of nonprofit agricultural cooperative associations,²⁰ general cooperative organizations,²¹ colleges,²² cemeteries,²³ and chambers of commerce or similar organizations.²⁴

In New York there is a general membership corporation

¹¹ N. Y. Membership Corporations Law.

¹² Ill. Ann. Stat. c. 32, secs. 163a *et seq.* (1954).

¹³ Mich. Comp. Laws secs. 450.117 *et seq.* (1948).

¹⁴ Cal. Corp. Code secs. 9000 *et seq.* (1953).

¹⁵ Cal. Corp. Code secs. 9000 *et seq.* (1953).

¹⁶ Cal. Corp. Code secs. 10000 *et seq.* (1953).

¹⁷ Cal. Corp. Code secs. 10200 *et seq.* (1953).

¹⁸ Cal. Corp. Code sec. 10250 (1953).

¹⁹ Cal. Corp. Code secs. 10400 *et seq.* (1953).

²⁰ Cal. Ag. Code secs. 1190 *et seq.* (1950).

²¹ Cal. Corp. Code secs. 12200 *et seq.* (1953).

²² Cal. Ed. Code secs. 24201 *et seq.* (1952).

²³ Cal. Health and Safety Code secs. 8250 *et seq.* (1952).

²⁴ Cal. Corp. Code secs. 12000 *et seq.* (1953).

act for nonprofit corporations.²⁵ This general act has special provisions for cemetery associations,²⁶ fire corporations,²⁷ corporations for prevention of cruelty,²⁸ Christian associations,²⁹ soldiers' monument corporations,³⁰ medical societies,³¹ alumni corporations,³² historical societies,³³ agricultural and horticultural corporations,³⁴ and boards of trade.³⁵ Colleges and other institutions of learning must be incorporated under the Education Law,³⁶ and there is a special act for the incorporation of cooperatives.³⁷ In addition to these acts there is a general Religious Corporations Law³⁸ with detailed provisions for the incorporation of approximately twenty different types of denominations³⁹ as, for example, the Protestant Episcopal Parishes or Churches,⁴⁰ Presbyterian Churches,⁴¹ Roman Catholic Churches,⁴² Churches of Christ, Scientist,⁴³ and many more.

²⁵ N. Y. Membership Corporations Law.

²⁶ N. Y. Membership Corp. Law secs. 70 *et seq.*

²⁷ N. Y. Membership Corp. Law secs. 110 *et seq.*

²⁸ N. Y. Membership Corp. Law secs. 120 and 121.

²⁹ N. Y. Membership Corp. Law secs. 140 to 142.

³⁰ N. Y. Membership Corp. Law secs. 160 to 164.

³¹ N. Y. Membership Corp. Law secs. 170 *et seq.*

³² N. Y. Membership Corp. Law secs. 180 *et seq.*

³³ N. Y. Membership Corp. Law secs. 190 *et seq.*

³⁴ N. Y. Membership Corp. Law secs. 200 *et seq.*

³⁵ N. Y. Membership Corp. Law secs. 220 *et seq.*

³⁶ N. Y. Ed. Law sec. 216. Many N. Y. private colleges were incorporated by special act of the legislature. Graves, "Development of the Education Law in New York," XXIV and XXV, printed in the preface to McKinney's N. Y. Education Law (1953).

³⁷ N. Y. Cooperative Corporation Law.

³⁸ N. Y. Religious Corporations Law.

³⁹ N. Y. Religious Corp. Law secs. 40 *et seq.*

⁴⁰ N. Y. Religious Corp. Law secs. 40 *et seq.*

⁴¹ N. Y. Religious Corp. Law secs. 60 *et seq.*

⁴² N. Y. Religious Corp. Law secs. 90 *et seq.*

⁴³ N. Y. Religious Corp. Law secs. 184 *et seq.*

Indiana has a general not-for-profit act⁴⁴ and approximately thirty additional acts for the incorporation of particular types of organizations. These corporations include: cooperatives;⁴⁵ foundation or holding companies;⁴⁶ lodges, churches, and societies;⁴⁷ lodge buildings, Masonic Bodies;⁴⁸ lodge buildings, Knights of Pythias and similar organizations;⁴⁹ charitable organizations of lodges and societies;⁵⁰ gymnastic associations;⁵¹ union of churches;⁵² Episcopal Church;⁵³ camp meeting associations;⁵⁴ missions;⁵⁵ Young Men and Women's Christian Associations;⁵⁶ educational institutions;⁵⁷ hospital associations;⁵⁸ coliseum building associations;⁵⁹ poultry, dog, and cat breeding associations;⁶⁰ and symphony associations.⁶¹

Michigan is particularly well blessed with a multitude of corporation statutes in the nonprofit area. Basically, the Michigan approach is sound, but the repeal of particularized acts has been less than satisfactory. Appended to the General Corporation Act are special sections appli-

⁴⁴ Ind. Ann. Stat. secs. 25-507 *et seq.* (Burns 1948).

⁴⁵ Ind. Ann. Stat. secs. 15-1601 *et seq.* (Burns 1950).

⁴⁶ Ind. Ann. Stat. secs. 25-1101 *et seq.* (Burns 1948).

⁴⁷ Ind. Ann. Stat. secs. 25-1501 *et seq.* (Burns 1948).

⁴⁸ Ind. Ann. Stat. secs. 25-1601 *et seq.* (Burns 1948).

⁴⁹ Ind. Ann. Stat. secs. 25-1701 *et seq.* (Burns 1948).

⁵⁰ Ind. Ann. Stat. secs. 25-1901 *et seq.* (Burns 1948).

⁵¹ Ind. Ann. Stat. secs. 25-2001 *et seq.* (Burns 1948).

⁵² Ind. Ann. Stat. secs. 25-2801 *et seq.* (Burns 1948).

⁵³ Ind. Ann. Stat. secs. 25-2201 *et seq.* (Burns 1948).

⁵⁴ Ind. Ann. Stat. secs. 25-2301 *et seq.* (Burns 1948).

⁵⁵ Ind. Ann. Stat. secs. 25-2701 *et seq.* (Burns 1948).

⁵⁶ Ind. Ann. Stat. secs. 25-3101 *et seq.* (Burns 1948).

⁵⁷ Ind. Ann. Stat. secs. 25-3201 *et seq.* (Burns 1948).

⁵⁸ Ind. Ann. Stat. secs. 25-3501 *et seq.* (Burns 1948).

⁵⁹ Ind. Ann. Stat. secs. 25-3901 *et seq.* (Burns 1948).

⁶⁰ Ind. Ann. Stat. secs. 25-4001 *et seq.* (Burns 1948).

⁶¹ Ind. Ann. Stat. secs. 25-4201 *et seq.* (Burns 1948).

cable to cooperatives,⁶² nonprofit corporations generally,⁶³ fraternal societies,⁶⁴ trustee corporations,⁶⁵ church trustee corporations,⁶⁶ educational corporations,⁶⁷ ecclesiastical corporations,⁶⁸ Sunday school or religious societies,⁶⁹ and public building corporations.⁷⁰ In addition to these general provisions there are six special acts⁷¹ for the incorporation of trade and labor associations; four acts⁷² for the incorporation of certain types of cemetery, cremation, and vault associations; forty-five acts⁷³ for the incorporation of particular types of fraternal organizations, including the Elks,⁷⁴ Moose,⁷⁵ Odd Fellows,⁷⁶ and Eskimos;⁷⁷ nineteen acts⁷⁸ for the incorporation of particular church organizations; and twelve acts⁷⁹ for the incorporation of particular types of agricultural corporations. The mere recital of this multitude of acts and divergence of treatment indicates that simplification is in order.

⁶² Michigan Comp. Laws secs. 450.98 *et seq.* (1948).

⁶³ Michigan Comp. Laws secs. 450.117 *et seq.* (1948).

⁶⁴ Michigan Comp. Laws secs. 450.133 *et seq.* (1948).

⁶⁵ Michigan Comp. Laws secs. 450.148 *et seq.* (1948).

⁶⁶ Michigan Comp. Laws secs. 450.159 *et seq.* (1948).

⁶⁷ Michigan Comp. Laws secs. 450.170 *et seq.* (1948).

⁶⁸ Michigan Comp. Laws secs. 450.178 *et seq.* (1948).

⁶⁹ Michigan Comp. Laws secs. 450.186 *et seq.* (1948).

⁷⁰ Michigan Comp. Laws secs. 450.186a *et seq.* (1948).

⁷¹ Michigan Comp. Laws secs. 454.1 *et seq.*, 454.51 *et seq.*, 454.71 *et seq.*, 454.101 *et seq.*, 454.151 *et seq.*, and 454.201 *et seq.* (1948).

⁷² Michigan Comp. Laws secs. 456.1 *et seq.*, 456.101 *et seq.*, 456.201 *et seq.*, and 456.251 *et seq.* (1948).

⁷³ Michigan Comp. Laws secs. 457.1 *et seq.* (1948).

⁷⁴ Michigan Comp. Laws secs. 457.301 *et seq.* (1948).

⁷⁵ Michigan Comp. Laws secs. 457.401 *et seq.* (1948).

⁷⁶ Michigan Comp. Laws secs. 457.321 *et seq.* (1948).

⁷⁷ Michigan Comp. Laws secs. 457.701 *et seq.* (1948).

⁷⁸ Michigan Comp. Laws secs. 458.1 *et seq.* (1948).

⁷⁹ Michigan Comp. Laws secs. 453.1 *et seq.* (1948).

II. SCOPE OF THE STUDY

This study of nonprofit corporation statutes is undertaken with the twofold purpose of analyzing present statutes and determining their adequacy in light of present day practices. For purposes of concentration, the Michigan acts are the foci of investigation, but considerable reference and comparative inquiry is made of law in other states. Detailed analysis is made of sections 98 to 186e of the Michigan General Corporation Act,⁸⁰ these sections being general provisions for the incorporation of various types of organizations not for pecuniary profit, as well as a number of other statutes relating to the incorporation of particular types of nonprofit organizations.⁸¹ Public utility corporations, banking institutions, and organizations subject to the Insurance Code are not included. In general, the policies of whether or not certain types of corporations should be encouraged or promoted will not be raised, but the desirability of changing, supplementing, or eliminating present provisions so as more effectively to carry out existing legislatively approved policies will be considered. The conclusions of the study will then be collated into a suggested act amenable to adoption in any state with a minimum of alteration.

III. HISTORY OF THE MICHIGAN GENERAL CORPORATION ACT

Although provisions were made for incorporation by both special and general acts under the Territorial and early Statehood regimes of Michigan,⁸² incorporation by

⁸⁰ Michigan Comp. Laws secs. 450.98 to 450.186e (1948).

⁸¹ See notes 71 to 79 *supra*.

⁸² Wilgus, "Changes Effected by the New Michigan Corporation Act," 1 MICH. S. B. J. lvii and xcvi (1922).

special act was the preferred procedure. The persistence of this cumbersome method was undoubtedly in large part due to the invalidation in 1844 of the general banking incorporation law of 1837.⁸³ The Supreme Court, in *Green v. Graves*,⁸⁴ held that the banking law was contrary to the Constitutional provision: "The legislature shall pass no act of incorporation unless with the assent of two thirds of each house."⁸⁵ The court said that the Constitutional provision was motivated by a fear of the rapid growth of corporations and inserted with a purpose of restriction. Hence, it was held to forbid the creation of an indefinite number of banking corporations under one general law.⁸⁶ It is interesting to note that the Federal court had previously reached a contrary decision,⁸⁷ but apparently *Green v. Graves*⁸⁸ invalidated all the then existing general corporation laws.⁸⁹

The Constitution of 1850 expressly provided for incorporation under general laws and prohibited incorporation by special act except for municipal purposes.⁹⁰ The legislature thereafter enacted a large number of general laws for the creation of specific types of corporations.⁹¹ Apparently, however, the earlier Supreme Court decision cast doubt on the policy of broad general incorporation laws, and the practice continued of incorporating nearly every species of company by special act cast in general terms.⁹² The

⁸³ Mich. Laws 1837, p. 76.

⁸⁴ 1 Doug. 351 (1844).

⁸⁵ Mich. Constitution, Art. XII, par. 2 (1835).

⁸⁶ *Green v. Graves*, 1 Doug. 351 (1844).

⁸⁷ *Falconer v. Campbell*, 2 McLean 195, 8 Fed. Cases No. 4,620, p. 963 (1840).

⁸⁸ 1 Doug. 351 (1844).

⁸⁹ *Tripp v. Plank Road Co.*, 66 Mich. 1, 2, 32 N.W. 907, 907 (1887).

⁹⁰ Mich. Constitution, Art. XV, sec. 1 (1850).

⁹¹ These are enumerated in Wilgus, *op. cit. supra* n. 82 at lix and lx.

⁹² Pepper, "Revision of Corporation Laws," 30 MICH. S. B. ASSOCIATION 119 (1920); Wilgus, *op. cit. supra* note 82 at lx.

result was a tremendous number of corporation statutes. Revision and simplification began in 1873⁹³ with the railroad law. Other acts of limited scope followed, so that by 1921 more than 150 acts had been repealed.⁹⁴ In that year the predecessor of the present General Act was passed.⁹⁵ It repealed another one hundred corporation acts.⁹⁶ Ten years later the present General Corporation Act was passed.⁹⁷ It also repealed a large number of corporation statutes. Most of the progress in simplification has occurred in connection with the commercial or profit type of corporation. The nonprofit statutes have received little attention since 1921, and are therefore deemed worthy of consideration at this time. The various general statutes will be examined seriatim.

⁹³ Pub. Acts 1873, No. 198; Mich. Comp. Laws 1915, c. 157, secs. 8232 *et seq.*; Mich. Comp. Laws 1897, secs. 6223 *et seq.*

⁹⁴ Wilgus, *op. cit. supra* n. 82 at lxi.

⁹⁵ Pub. Acts 1921, No. 84.

⁹⁶ Wilgus, *op. cit. supra* n. 82 at lxi.

⁹⁷ Mich. Pub. Acts 1931, No. 327; Mich. Comp. Laws secs. 450.1 *et seq.* (1948).