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Corporations - Political Activities - Interpretation of Statute Prohibiting Political Contributions by Corporation

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CORPORATIONS—POLITICAL ACTIVITIES—INTERPRETATION OF STATUTE PROHIBITING POLITICAL CONTRIBUTIONS BY CORPORATIONS—Defendant corporation, organized to promote the recall of Senator Joseph R. McCarthy, was charged with violating section 346.12 of the Wisconsin statutes, which prohibits corporations doing business in Wisconsin from paying or contributing any money, etc., to promote or defeat the candidacy of any person for nomination, appointment, or election to any political office. The trial court entered a forfeiture judgment against the defendant. On appeal, *held*, reversed. The statutory phrase “doing business” was intended to limit the scope of the prohibition to corporations organized for profit. Corporations, such as the defendant, organized solely for political purposes are not within the prohibition of the act. *State v. Joe Must Go Club of Wisconsin, Inc.*, 270 Wis. 180, 70 N. W. (2d) 681 (1955).

Statutes prohibiting corporations from contributing to political causes can be found in the majority of the states¹ and the federal code.² Most of these statutes were enacted at the turn of the century as part of a general

¹ Ala. Code (1940) tit. 17, §286; Ariz. Code Ann. (1939) §43-1508; Conn. Gen. Stat. (1949) §1159; Del. Code Ann. (1953) tit. 18, §532; Fla. Stat. (1953) §104.091; Ga. Code Ann. (1936) tit. 22, §22-724; Ind. Stat. Ann. (Burns, 1949) §29-5712; Iowa Code (1954) §491-69; Kan. Gen. Stat. Ann. (1949) §25-1709; Ky. Rev. Stat. (1953) §123.010; La. Rev. Stat. (1950) tit. 18, §1482; Md. Code Ann. (1951) art. 33, §174; Mass. Laws Ann. (1953) c. 55, §7; Mich. Comp. Laws (1948) §196.14; Minn. Stat. (1954) §210.20; Miss. Code Ann. (1944) §2112; 8 Mo. Stat. Ann. (Vernon, 1952) §129.070; Mont. Rev. Code Ann. (1949) tit. 94, §1444; Nev. Comp. Laws (Hillyer, 1930) §2619; N.H. Rev. Laws (1942) c. 42, §17; N.J. Stat. Ann. (1940) §§19:34-32, 34-35; 39 N.Y. Consol. Laws (McKinney, 1944) §671; N.C. Gen. Stat. (1952) §163-196(14); N.D. Rev. Code (1943) tit. 16, §2008; Ohio Rev. Code (Baldwin, 1953) §3599.03; Okla. Stat. (1951) tit. 26, §439; Ore. Rev. Stat. (1953) c. 260, §260.280; Pa. Stat. Ann. (Purdon, 1938) tit. 25, §3225(b); S.D. Code (1939) tit. 16, §16-2003; Tenn. Code Ann. (1934) §11340; Tex. Pen. Code (Vernon, 1952) art. 213; Utah Code Ann. (1953) tit. 20, §20-14-21; W.Va. Code (1955) §188; Wis. Stat. (1953) c. 346, §346.12; Wyo. Comp. Stat. Ann. (1946) §31-2410.

² 18 U.S.C. (1952) §610.

legislative reaction against corporations caused by the fear that large business enterprises would usurp political power.³ The courts have not had too much difficulty finding these statutes constitutional,⁴ but their possible scope has caused more than a little trouble.⁵ The problem in the principal case is the interpretation of that part of the statute which prohibits corporations doing business in the state from contributing to political causes. The Wisconsin court reads the qualifying language "doing business" to include only profit-making corporations. An earlier decision in Minnesota,⁶ interpreting a similar statute, said that "doing business" meant the exercise of the functions for which the corporation was created, thus including political corporations within the statutory prohibition.⁷ An interesting element in the principal case was the effect of section 12.09 (5) of the Wisconsin statutes. This subsection, which has no counterpart in Minnesota, requires the publication of all receipts and disbursements made by a corporation organized for political purposes, thus implying consent to such activity.⁸ Since the subsection was passed after section 346.12, the Wisconsin court said that section 12.09 (5) was a recognition by the legislature that corporations organized solely for political purposes can engage in political activities as long as they report these activities.⁹ It has been argued that these problems of interpretation could be solved as easily as was the problem of the Gordian knot, for the basic question is whether statutes such as sec-

³ Statutes of this type are usually considered part of the Corrupt Practices Act of the particular jurisdiction. See Bottomley, "Corrupt Practices in Political Campaigns," 30 *Bost. Univ. L. Rev.* 331 (1950).

⁴ See 69 *A.L.R.* 377 (1930).

⁵ See 125 *A.L.R.* 1029 (1940).

⁶ *La Belle v. Hennepin County Bar Assn.*, 206 *Minn.* 290, 288 *N.W.* 788 (1939).

⁷ *Id.* at 294. According to the cases collected in 13 *WORDS AND PHRASES* 126 at 141, 159 (1940), the Minnesota interpretation is the accepted view. Both the Minnesota and Wisconsin courts rationalized their positions on the basis of legislative intent. The Minnesota court said that, as amended, the prohibition applied to all corporations since the statute had formerly prohibited only corporations organized for profit. The Wisconsin court claimed that since an amendment was needed to include co-operative associations within the prohibition, any other kind of non-profit organization should be excluded unless specifically covered.

⁸ Several other state statutes appear to grant political corporations immunity from the prohibition. E.g.: the New York and Michigan statutes expressly exclude political corporations from their prohibition; South Dakota prohibits corporations organized for profit only; Connecticut restricts the prohibition to "private" corporations; Kansas, Massachusetts, Montana, Nevada, New Jersey, and Oregon expressly state what types of corporations are included, and do not include political corporations; North Dakota prohibits corporations from contributing to corporations maintained for political purposes, thus implying that the latter may exist; Delaware restricts the prohibition to insurance corporations; Iowa has the prohibition in a section entitled "Corporations for Pecuniary Profit."

⁹ See *Smith v. Higinbotham*, 187 *Md.* 115, 48 *A.* (2d) 754 (1946). Whether non-profit corporations other than those organized for political purposes may be excluded from the prohibition of the statute is doubtful. Certainly, as far as the principal case is concerned, any statement to that effect is dictum. Strong arguments why other non-profit corporations should not be excluded may be found in *La Belle v. Hennepin County Bar Assn.*, note 6 *supra*, at 295.

tion 346.12 should be repealed entirely.¹⁰ These statutes have proved extremely difficult to enforce¹¹ and with the seeming dissipation of the public's fear of large business enterprises, no strong reasons exist for their continuation. Moreover, a law such as section 12.09 (5) of the Wisconsin code, requiring publication of corporate contributions for political purposes, should sufficiently inform and protect the public. Such a logical and realistic change from prohibition to publication would certainly provide a more effective control than that existing today.

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¹⁰ See Bicks and Friedman, "Regulation of Federal Election Finance: A Case of Misguided Morality," 28 N.Y. UNIV. L. REV. 975 (1953).

¹¹ *Id.* at 995.