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The Political Act: Its Application to Annexation, Third Party Attack, and Corporate

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THE POLITICAL ACT: ITS APPLICATION TO ANNEXATION, THIRD PARTY ATTACK, AND CORPORATE AUTHORITY

Prior to an attempted annexation by Brown Deer and an attempted consolidation by the city of Milwaukee, Granville was an unincorporated area located in Milwaukee County. In 1956, Brown Deer, by adopting a number of ordinances, purported to annex part of Granville. In the same year Milwaukee adopted an ordinance purporting to annex a portion of Granville which was included in Brown Deer's annexation. During the same year Granville and Milwaukee adopted consolidation ordinances which were subsequently approved by referendum. A controversy arose concerning the validity of the annexation ordinances and the consolidation ordinance. The problem was brought before the Supreme Court of Wisconsin on two occasions prior to a trial of the issues. Upon the first appeal, it was determined that Brown Deer's annexations of the territories in Granville took precedence over Milwaukee's consolidation with Granville. It was determined that if Brown Deer's annexation ordinances were valid the territories involved would become part of Brown Deer.[1] Pursuant to the order of the supreme court upon the second appeal, the trial court entered summary judgement that the consolidation ordinances of Milwaukee and Granville were valid.[2]

After the decision on the second appeal, the matter proceeded to trial where it was decided, in light of the two preceding decisions of the Wisconsin Supreme Court, that three out of the five Brown Deer annexation ordinances were invalid. An appeal was thereafter perfected bringing to the supreme court the issue of the validity of those ordinances. The invalidity of the ordinances was upheld by a determination that they did not comply with §62.07(1)(a).[3] The reason given was that the petition presented to the council pursuant to the enactment of the ordinances did not contain the signatures of ". . . a majority of the electors in such adjacent territory and by the owners of one-half of

[1] Village of Brown Deer v. City of Milwaukee, 274 Wis. 50, 79 N.W.2d 340 (1956).

[2] Village of Brown Deer v. City of Milwaukee, 2 Wis.2d 441, 86 N.W.2d 487 (1957).

[3] WIS. STAT. §62.07(1)(a) (1955), "(1) Annexation procedure. Territory adjacent to any city may be annexed to such city in the manner following: (a) A petition therefore shall be presented to the council. 1. signed by a majority of the electors in such adjacent territory and by the owners of one-half of the real estate within the limits of the territory proposed to be annexed. or 2, if no electors reside in the said adjacent territory signed by the owners of one-half of the taxable property therein according to the last tax roll, or 3, by a majority of the electors and the owners of one-half of the real estate in assessed value; provided, that no petition for annexation shall be valid unless at least 10 days and not more than 20 days before any such petition is caused to be circulated, a notice shall be posted in at least 8 public places in the municipality."

the real estate within the limits of the territory proposed to be annexed. . . ."

The issues to be discussed in this article will be confined to one of the ordinances, namely, the Corrigan Annexation, since what is said by the court in respect thereto is applicable to the remaining ordinances. The Corrigan Annexation petition contained the signature of the president of the Evert Container Corporation who signed the petition for the corporate property included within the area of the annexation attempt. The president of the corporation signed the petition without formal authorization of the board of directors as provided by §180.30[4] and without informal authorization as provided by §180.91.[5] The supreme court found that the president owned 51 per cent of the stock, that he was accustomed to resolving the problems of the corporation as sole owner, that the board of directors met infrequently, that the corporation subsequently ratified the act, and that, in spite of this, his act was outside the bounds of the statute and therefore was invalid. The court based its decision upon two grounds: (1) that the enactment of §180.91 (supra) pre-empts the field and prohibits corporations from acting informally,[6] and (2) that the doctrines of apparent authority and estoppel cannot apply because the action of the president in the present case related to a "political act". The court also used the phrase "political act" in dispelling the contention of the appellant, Brown Deer, that because the respondent, City of Milwaukee, is a third party it lacked standing to challenge the authority of the corporate president. The court reasoned that since the act of signing was a "political act", the ". . . other interested parties may be heard to challenge the validity thereof."[8] The practical effect of invalidating the signature was to invalidate the ordinances, because without the representation of the corporate property the petition was not signed ". . . by a majority of the electors and the owners of one-half of the real estate in assessed value."[9]

The decision raises a number of perplexing issues, the answers to which appear to be left to speculation. First, by their construction of

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[4] WIS. STAT. §180.30 (1955): "The business and affairs of a corporation shall be managed by a board of directors. . . ."

[5] WIS. STAT. §180.91 (1955): "Any action required by the articles of incorporation or by-laws of any corporation or any provision of law to be taken at a meeting or any other action which may be taken at a meeting, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders, subscribers, directors or members of a committee thereof entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state under this chapter."

[6] Village of Brown Deer v. City of Milwaukee, 16 Wis.2d 206, 114 N.W.2d 493 (1962).

[7] *Supra* note 4.

[8] *Ibid.*

[9] *Supra* note 3.

§180.91,[10] does the court abrogate entirely the doctrine of apparent authority as heretofore applied in regard to the power of the president to act for a corporation? Second, is the state of the law changed in Wisconsin as to the validity of a third party attack upon the authority of a corporate officer to act for a corporation? Third, what is a "political act" and when and how does it determine corporate conduct? Fourth, what are the practical aspects of the court's determination with respect to corporate practice?

I. THE POWER OF THE PRESIDENT OF A CORPORATION TO ACT

The principle case seems to abrogate the doctrine of apparent authority as heretofore established in the law of Wisconsin. The president of the Evert Container Corporation, the corporation whose property was contained within the proposed Corrigan annexation, owned more than half of the stock of that corporation and was accustomed to acting as sole owner in regard to corporate matters, and the board of directors, which met infrequently, was accustomed to ratifying his past acts. Under these established facts, the president signed the annexation petition, without either formal or informal authorization by the board of directors; this act was later ratified at a meeting of the board of directors. It would seem that the act of the president in signing the annexation petition would fall under the rule of *McElroy vs. Minnesota Percheron Horse Co.*[11] which holds that:

> A corporation may so conduct its affairs as to confer by implication, upon its president, powers much beyond those strictly incident to his office, even to the extent of exercising the entire powers of the corporation, which, by the articles, are vested solely in the board of directors. The powers of the president of a corporation or any other officer thereof, do not depend solely upon the title of the office or the actual delegation of power, but upon the appearances with which the officer is clothed by the corporation; that is to say, it is the apparent power of the officer, not the actually delegated power, which governs. The law is well settled that, within the scope of his apparent power, the president of a corporation, by his acts, binds such corporation the same as if he were the agent of a natural person.

The court recognizes the general rule that power to manage corporate affairs is vested in the board of directors and as such must be exercised by them as a board,[12] but the court apparently does not recognize the exception or extension or that rule as set out in the *McElroy* decision.

It could be further stated that if the presisdent acts as general manager of the corporation, he possesses the implied power to do anything

[10] *Supra* note 5.
[11] McElroy v. Minnesota Perceron Horse Co., 96 Wis. 317, 71 N.W. 652 (1897).
[12] 2 FLETCHER, CYCLOPEDIA CORPORATION §392, at 277 (1958).

the corporation could do within the general scope of its business,[13] and that ". . . corporations have the implied power to make all such contracts as will further the objects of their creation."[14] It would then seem logical to state that due to the mode of operation of the corporation, the president was its general agent and as such had the power to sign the petition on behalf of the corporation since the corporation itself had the power to sign the petition.

Another doctrine well established in the law of Wisconsin is the ratification of corporate acts where the requisite authority of the president was lacking at the time of execution of the act in question. This doctrine is set out in the case of *Moody & Meckelburg Co. vs. Trustees of Methodist Episcopal Church:*[15]

> A corporation may ratify the unauthorized act of one claiming to act as its agent, as well as a natural person, and such ratification, when made with knowledge of the facts, operates as though previous authority had been given.

Ratification binds the corporate act of an agent who exceeds his powers in acting for the corporation.[16] The ratification need not be formally enacted to validate a corporate act of an agent who exceeds his powers. The mere knowledge on the part of the board of directors will be deemed sufficient to constitute a ratification and validate the act as of the time it was performed.[17]

Assuming that the president of the Evert Container Corporation had neither the actual authority nor the apparent authority to sign the petition, it would appear that the act was a valid exercise of the president's power at the time of performance in light of the mode of operation of the corporation and the later actual ratification of the act by the board of directors. Under either doctrine the court would have been justified in concluding that the signature was valid.

The court, however, side stepped these arguments on two grounds, first that:

> The legislature has said that the corporation could act informally, without a meeting, by obtaining the consent in writing of all of the Directors. In (their) opinion, this pronouncement has pre-

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[13] Diederich v. Wisconsin Wood Products Inc., 247 Wis. 212, 19 N.W.2d 268 (1945).

[14] May Tire & Service, Inc. v. Sinclair Refining Co., 240 Wis. 260, 3 N.W.2d 347 (1942).

[15] Moody & Meckelburg Co. v. Trustees of Methodist Episcopal Church, 99 Wis. 49, 74 N.W. 572 (1898).

[16] *Supra* note 13.

[17] State *ex rel.* Kropf v. Gilbert, 213 Wis. 196, 251 N.W. 478 (1933); ". . . knowledge on the part of the board of directors of acts performed by corporate officers is sufficient to constitute a ratification of such acts," is the language approved in May Tire & Service, Inc. v. Sinclair Refining Co., *supra* note 14, at 264, 3 N.W.2d at 350.

> empted the field and prohibits corporations from acting informally without complying with sec. 180.91, Stats.

and second that:

> The presence of apparent authority . . . cannot apply where the action of the directors relates to a political determination and is outside of the ordinary course of normal business operations.[18]

The first ground will be discussed here, and the second under topic III.

The historical background of §180.91 implies that it was enacted to implement the field of an agent's authority and not to restrict it. The object of the legislation was to permit informal unanimous action even though the articles of incorporation or the by-laws provided only for action at a meeting. In other words, the purpose of the enactment was not to preempt the field of informal action by corporate agents but to allow informal action where such action was not allowed by the articles or by-laws of the corporation.[19] Such an interpretation would be more in keeping with the present trend of business activity and the realization that legitimate business operations should be promoted rather than restricted.[20] In further support of this realization, the courts have raised a presumption in favor of the authority of the officer who signs in behalf of the corporation.[21] The Wisconsin court has also promulgated the theory that since the business of a corporation is committed to its officers and directors, their actions which are consistent with the exercise of honest discretion should not be overruled.[22] It has also been said that:

> As industrial conditions change, business methods must change with them, and acts become permissible which at an earlier period would not have been considered to be within corporate power.[23]

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[18] *Supra* note 6.

[19] *Ibid.*

[20] Milwaukee Trust Co. v. VanValkenburgh, 132 Wis. 638, 646, 112 N.W. 1083, 1085 (1907), "The law, especially so far as it is competent for courts, unrestrained by legislative enactments, to declare and administer it, promotes rather than obstructs legitimate business operations. If it were not as indicated, the modern methods of doing almost all kinds of business through artificial persons would be very prejudicially handicapped." See also Curtis Land & Loan Co. v. Interior Land Co., 137 Wis. 341, 118 N.W. 853 (1908) and St. Clair v. Rutledge, 115 Wis. 583, 92 N.W. 234 (1902).

[21] Milwaukee Trust Co. v. VanValkenburgh, *supra* note 20; St. Clair v. Rutledge, *supra* note 20; Ceeded v. H. M. Load & Sons Lumber Co., 86 Mich. 541, 49 N.W. 575 (1891); Kalamazoo T. P., Kalamazoo Cty. v. City of Phoenix, 83 Ariz. 98, 317 P.2d 537 (1957).

[22] Roberts v. Saukville Canning Co., 250 Wis. 112, 124, 26 N.W.2d 145, 150 (1947), ". . . it is important to remember that the business of a corporation is committed to its officers and directors and their actions are not to be overruled if they are consistent with the exercise of honest discretion."

[23] Martin Orchard Co. v. Fruit Growers Canning Co., 203 Wis. 97, 233 N.W. 603 (1930), citing with approval, Theis v. Durr, 125 Wis. 651, 104 N.W. 985 (1905).

The foregoing study would seem to indicate that the trend in this jurisdiction, as well as elsewhere, has been to increase the scope of authority possessed by the corporate agent rather than restrict it, and to promote business enterprise through the expansion of such authority rather than adopt stricter means and methods by which corporations must act.

If the conclusion is now reached that corporate officers can not act for the corporation under any volition of their own regardless of the apparent authority they possess or regardless of the mode of operation of the business or of the later ratification by the board of directors, the doctrines of apparent authority and ratification in the law of Wisconsin have been abrogated. However, somewhat a different interpretation of §180.91 would protect the doctrine of ratification as established in this jurisdiction and would tend to follow the present trend in judicial opinion by staying within the realities of corporate practice. This alternate determination is well stated by Justice Currie's dissent in the principle case:

> The majority concludes that the only way informal corporate action may legally be taken is by strict adherence to the provisions of 180.91, Stats. . . . A reasonable interpretation of this statutory language permits the construction that the consent may be signed *after* the action has been taken. Such a construction is more in keeping with the practicalities of corporate action and with the realities of present corporate practice.[24]

It will be remembered that in the principle case the president's act was ratified so that this interpretation of the statute would not only be in "keeping with the practicalities of corporate action"[25] but would preserve the doctrine of ratification and still accommodate the majority's policy of strict adherence to the statutory mode of corporate action.

II. Validity of Third Party Attack

The appellants, Brown Deer, argued in the principle case that the City of Milwaukee was a third party in regard to the action of the president of the Evert Container Corporation in signing the annexation petition and, as such, had no standing to challenge his authority to so sign. The Wisconsin Supreme Court seemingly recognized the argument as the law in Wisconsin, but made an exception in this case based on the fact that here the act of signing the annexation petition was a "political act"; hence, it was susceptible to attack by other interested parties.[26] Upon this premise it was logical for the court to deem the City of Milwaukee an interested party, for it was vitally concerned with the validity of the ordinances due to its own annexation and consolidation at-

[24] *Supra* note 6.
[25] *Ibid.*
[26] *Ibid.*

tempts. The majority of the court, speaking through Justice Gordon, said:

> However, we believe that when a corporation purports to perform a political act, as opposed to a business act, other interested parties may be heard to challenge the validity thereof. Milwaukee is a vitally interested third party.

and further that,

> We conclude that an interested municipality may raise the question of the lack of authority of a person purporting to sign an annexation petition on behalf of a corporation.[27]

The general rule prior to the decision in the principle case is well stated by a recognized writer in the field,

> As a general rule, if a corporation does not raise the objection that an officer or other person assuming to enter into a contract or do any other act on its behalf, and particularly if it has ratified the act, the objection of want of authority cannot be raised by third persons.[28]
>
> Moreover, as already stated the general rule is that only the stockholders and the corporation, can question the validity of a corporate act or instrument on the ground that the required consent of stockholders was not obtained or that the consent was not a valid one because not given as provided for by the statute or charter.[29]

The Supreme Court of Wisconsin in its prior decisions has voiced its acceptance of this rule,[30] and since the court does not overrule these prior decisions, it can only be concluded that what the court said in the principle case is an exception to the general rule and not a complete overturning of prior case law. The wisdom of such an exception is left to future determination. However, the decision on its face opens the door to at least one type of third party attack heretofore prohibited. The reasoning in the main case is capable of an interpretation which would allow not only municipal corporations standing to attack the authority of corporate executives to sign petitions but also individuals who can show that they are a "vitally interested third party." The allowance of such third party attack would be a serious detriment to the orderly conduct of corporate business. This is one possible way of expanding the exception set out in the main case—a possibility which would logically follow. The extent to which the exception can be ex-

[27] *Supra* note 6, at 212, 114 N.W.2d at 497.

[28] 2 FLETCHER, CYCLOPEDIA CORPORATIONS §490 (1958).

[29] *Supra* note 6, at 222, 114 N.W.2d at 502, Justice Currie in his dissent stated, "The apparent theory behind this rule is that the failure of the corporation to object to an unauthorized act done in its behalf constitutes a tacit ratification, and that the policy of the law favors an interpretation which permits parties to rely on acts taken in behalf of corporations."

[30] Kennedy v. Knight, 21 Wis. 345 (1867), Germantown Farmer's Mutual Ins. Co. v. Dhein, 43 Wis. 420 (1877).

panded is too speculative for comment here, and the direction and substance of further expansion, if any, must be left to future court determination.

The court also justifies its decision upon the stated proposition that the corporation did not comply with the statutory mode of corporate action.[31] Justice Currie, in his well reasoned dissent, states that,

> Statutory requirements that a corporation must follow a certain specified procedure, in authorizing action by its president, are made for the protection of the corporation and its shareholders, not as a sword to be used by a third party such as the City of Milwaukee in this action.[32]

In other words, the statutory requirements were enacted so as to protect the corporation from the unauthorized actions of its agents. A corporation, having no physical existence, must be protected from the acts of its agents in order to survive and prosper. However, once an act, which when done is outside the scope of corporate authority but is ratified, as in the instant case, the need for such protection vanishes, for the ratified act has the effect of being passed on by the board of directors or stockholders as the case may be, thus offering the corporation the same protection it would have received had the stockholders acquiesed in the act in the first instance. The conclusion that the statutes were not enacted for the use of third persons but for the protection of the corporation appears, therefore, to be justified on the grounds of logic and practicality.

These arguments become unnecessary if the court would interpret §180.91 as allowing consent by the board of directors after the act in question to act as a ratification and validate the corporate officer's act as of the time of execution. Such a holding would not only eliminate the possibility of extinguishment of the doctrine of ratification, but would also eliminate in most instances the possibility of third party attack, thus promoting rather than disrupting legitimate corporate enterprise.

III. Political Act or Determination

The Wisconsin Supreme Court in the *Brown Deer* case decided the issues there presented upon the basic determination that the act of signing the annexation petition was a "political act" or "political determination." As a result of so deciding, the court stated that since the act of signing was a "political act," vitally interested third parties had standing to challenge the validity of the corporate act,[33] and that since the act relates to a "political determination,"[34] the doctrine of apparent author-

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[31] *Supra* notes 4 and 5.
[32] *Supra* note 6, at 223, 114 N.W.2d at 502.
[33] *Supra* note 6.
[34] *Ibid.*

ity does not apply. The problems previously discussed stem from this basic determination. The terms "political act" and "political determination" though having the inherent susceptibility of different definitions will be equated for the balance of this article, for it seems that the court makes no distinction between them and for all practical purposes in the context of the case they are synonomous.

Nowhere in the case is the term "political act" defined, nor is it elaborated upon to any great extent. Certainly, it can be concluded that henceforth the signing of an annexation petition will be deemed a political act. However, the court does not clarify the issue as to future corporate action. The court, in not defining or elaborating upon the subject, makes it difficult to determine the line of demarcation between a political act on the one hand and a business act on the other. The importance, of such a distinction is vital, for when an act is defined as political, third parties may question the authority of the acting corporate officer, and also, the doctrine of apparent authority, if still existing in the face of the *Brown Deer* decision, will not apply. The issue becomes more perplexing because under the facts in the main case, there was no finding that the decision to sign the petition was motivated by political inclinations. Nor was it found that the decision of the corporation was placed on political grounds. The decision could have been arrived at solely on the basis of possible tax advantages, or because the municipality of Brown Deer offered better municipal services to the corporation, or because of some other purely business reason. The mere fact that a government unit is concerned certainly cannot place the action within the realm of political acts, because many corporate activities, while involving some government unit, remain basically business decisions. Whether or not the decision is thus limited to annexation proceedings or also involves any or all actions by a corporation where a governmental unit is involved must await further judicial determination. However, the sweep of the language suggests that the decision will not be so limited.

The court in the context of its determination that the act performed by the president of the Evert Corporation in signing the petition was a political act and, therefore, outside the scope of business of the corporation stated that:

> The signing of a petition which would change the local government under which the corporation functions is more closely analogous to such unusual acts of the corporation as the disposition of its assets, as opposed to acts in the ordinary course of business.[35]

The analogy is an attempt by the court to place the case within the conceded rule that extraordinary acts such as the disposition of assets fall

[35] *Ibid.*

outside the ordinary scope of business of a corporation and, hence, must be decided by a formal meeting of the board of directors. Such an analogy was brought to the attention of the Arizona Court of Appeals in argument upon an issue similar to the one here presented.[36] The annexation petition in that case was signed by the local manager of the General Motors Corporation property located within the area to be annexed. The manager had received his authority to sign from a vice-president of the corporation. The statute of Arizona under which the case was decided was similar to the Wisconsin statute.[37] The court, after disposing of the case on other grounds, stated in reply to the argument that signing an annexation petition is analogous to disposing of corporate assets that:

> Appellants seem to be under the impression that consenting to become a part of a municipality is the equivalent of alienating or encumbering property but we have held to the contrary.[38]

The court further states in the *Gorman* case that if the authority of the manager is not genuine, the company must object and not the third party. The decision of the Arizona court is in keeping with the argument that the decision to sign an annexation petition is not such an extraordinary act as the disposition of assets but is more analogous to an act within the scope of corporate affairs. An analogy could be drawn between the decision to be annexed to Brown Deer rather than Milwaukee and the decision to physically move the plant to another locality and/or into a different municipality. This analogy would seem to be more practical than that which the court proposes.

The distinction that if a corporation is engaged in a "political act", a third party has standing to challenge the authority of the officer through which the corporation acts is inconsistent with the proposition that a corporation under the same circumstances cannot, in most instances, so challenge such lack of authority. If the consent of all the stockholders of a corporation to a transaction is procured, they are precluded from subsequently objecting to the transaction on the ground that it was invalid.[39] Under the doctrine of ratification, if the board of directors has knowledge of the acts, the acts will be deemed valid as of the time of execution, and the directors lack standing to object.[40] If the corporation has clothed the acting officer with the authority to act for

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[36] Gorman v. City of Phoenix, 76 Ariz. 35, 258 P.2d 424 (1953).

[37] ARIZ. REV. STAT. ANN. §16-701 (1939), "Any city may extend its corporate limits in the manner folowing: On presentation of a petition in writing, signed by the owners of not less than ½ in value of the property in any territory continguous on the city. . . ."

[38] The Arizona court cites as authority, City of Phoenix v. State, 60 Ariz. 369, 137 P.2d 183 (1943).

[39] Davies v. Meisinheimer, 254 Wis. 419, 37 N.W.2d 93 (1949).

[40] May Tire & Service v. Sinclair Refining Co., 240 Wis. 260, 3 N.W.2d 347 (1942).

it in a particular business matter, and a third person has relied on such apparent authority, the corporation cannot object, and it is bound by the acts of the officer.[41] These rules are consistent with the rule that third parties lack standing to question the acts of corporate officers and are consistent with the general theory that ". . . the law favors an interpretation which permits parties to rely on acts taken in behalf of corporations."[42] Seemingly, the distinction that the signing of an annexation petition is a "political act" rather than a business act allows third parties to attack the authority of the signature but does not change the law so that the corporation, its board of directors, or its stockholders can attack that same authority. This would appear to be inconsistent and also in and of itself suggests an argument against such a distinction. Even assuming that the act was political rather than business, it would seem in the light of what has previously been said that the distinction has no apparent basis and that the rationale ". . . of the general rule is just as applicable to so-called political acts as it is to strict business acts."[43]

IV. The Practical Aspects of the Decision

The facts stated in the *Brown Deer* decision clearly established that the corporation's general mode of operation was centered around the practice of the president and majority stockholder to conduct the business of the corporation as its sole owner; all the decisions so made by the president were ratified by the board of directors. To these facts are added the circumstance that the board of directors informaly acquiesed in the act prior to its execution and prior to their formal ratification. This mode of operation is a generally accepted procedure where the corporation is small and closely owned since in the light of practical experience the president and majority stockholder is, in most cases, the driving force behind the corporation's success or failure and thus controls the corporation as if he were the sole owner. It could be further shown that the will of the majority stockholder and founder in most cases is the will of the board of directors so that practically speaking he is the board of directors. Whether or not this mode of operation should be promoted or discouraged, the majority decision seems to disregard these practical aspects and decides the case in favor of strict adherence to their interpretation of the statutes involved. The realities of present day corporate practice are thus disregarded in favor of a procedure which adds form to corporate practice but does not change the substance nor the end result. Under the particular fact situation here presented, it would seem beyond question that the same de-

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[41] Diederich v. Wisconsin Wood Products, 247 Wis. 212, 19 N.W.2d 268 (1945).
[42] *Supra* note 6.
[43] *Ibid.*

cision would have been reached whether or not there was a strict compliance with the statutory procedure.

In keeping with the realities of corporate practice, the Wisconsin Supreme Court has on previous occasions stated a rule which when applied in the context of such realities comes to a more logical conclusion. This rule is well stated in *Roberts vs. Saukville Canning Co.:*

> . . . It is important to remember that the business of a corporation is committed to its officers and directors and their actions are not to be overruled if they are consistent with the exercise of honest discretion.[44]

If this concept had been applied in the main case, the mode of operation and the practicalities of corporate practice could have been considered, and the decision would have grounded itself on a more practical basis.

Another practical aspect of the decision in the instant case is that it could have a tendency to disrupt orderly business procedures due to the accepted fact that third parties will have standing to challenge the authority of corporate officers even where the corporation itself does not challenge such authority.

Further, it would seem that the reliability heretofore placed upon corporate acts will be impunged.[45] Corporations and third parties will have the added burden of establishing corporate authority in order to place reliance upon the acts of corporate officers. This added burden is unrealistic in view of prior case law development in the area. In *St. Clair vs. Rutledge* it was stated:

> As has often been said, intolerable mischief would result from requiring every person at his peril, in dealing with the president of a corporation, in a matter outside the scope of his duties as such to first examine its records.[46]

It was further stated in *Curtis Land & Loan Co.,* that:

> It certainly is not the practice of persons dealing with officers or agents who assume to act for such entities to insist on being shown the resolution of the board of directors authorizing the particular officer or agent to transact the particular business which he assumes to conduct.[47]

The decision seems to disregard this development and place an intolerable burden upon corporations and the third parties who deal with them.

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[44] Roberts v. Saukville Canning Co., 250 Wis. 112, 26 N.W.2d 145 (1947); Steven v. Hale-Haas Corp., 249 Wis. 205, 23 N.W.2d 768 (1946), Glenwood Mfg. Co. v. Syme, 109 Wis. 355, 85 N.W. 432 (1901).

[45] *Supra* note 6, at 224, 114 N.W.2d at 503, Justice Currie in his dissent stated, "The result of this decision is to impugn the ability of both third parties and members of a corporation to rely on acts of corporate officers. The social utility of definitness of corporation action outweighs the utility of letting a city utilize every significant flaw to avoid annexation."

[46] St. Clair v. Rutledge, 115 Wis. 583, 92 N.W. 234 (1902).

[47] Curtis Land & Loan Co. v. Interior Land Co., 137 Wis. 341, 118 N.W. 853 (1908).

The decision in the instant case may also have the effect of forcing the small, closely held corporations to hold formal meetings as a matter of fact. This added burden, when in fact there appears to be no abuse in the area, is without justification.

V. Conclusion

The Wisconsin Supreme Court in the *Brown Deer* case has created a new problem in the field of corporate management. By its decision it has added a new consideration to this already complicated field. In the future a corporate executive who makes a decision for the corporation must not only weigh each and every business factor which relates to the problem and also the legal problems involved, but he must also decide whether or not the decision he is making is a political act. If it is, he will subject this decision to third party scrutiny, will preclude corporations and third parties from relying upon the doctrines of apparent authority and of ratification, and will have to acquire the approval of the board of directors either by formal meeting or by informal action under §180.91. Parties dealing with the corporation will also become involved, because they will have the burden of establishing the authority of the corporate officer with whom they are dealing in order to be able to rely upon the corporate act.

The distinction between business and political acts appears to be a new concept in the law of this state and elsewhere. The determination must await further judicial opinion to clarify the extent of the decision and its practical effect. It would seem beyond speculation, however, that, in the future, corporate officers must get formal approval or informal approval under §180.91 before they can commit the corporation in annexation proceedings.

The practical effect of the decision in the *Brown Deer* case is to place the Evert Container Corporation in an undesired municipality and to force a majority of the population within the area of the annexation attempt into that municipality against their precise wishes.

Edmund C. Carns