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# PRACTICAL STEPS IN ORGANIZING A CORPORATION<sup>1</sup>

C. J. SCHLOEMER.\*

THE aim of this article is to present in outline form the steps of procedure that the lawyer must follow in placing the newly formed corporation into operation. It is not an attempt to present an all inclusive statement of procedure, but rather, it is intended to serve as a road map for the young lawyer in his first attempt to organize a corporation. It is intended to cover those simple points that can not readily be found in the law books, probably because every lawyer is presumed to know them. However, it has too often been demonstrated that there frequently is a vast difference between a presumption and the actual fact. It will readily be seen that no attempt is made here to cover the technical legal steps necessary for the conception of a new corporation. For a splendid treatment of that branch of practical corporation law see the article by Dean Clifton Williams, "Incorporation of a Wisconsin Corporation," 3 *Marquette Law Rev.* 64 (1919). The diagram included in that article can also be found on the fly leaf of *Henderson's Wisconsin Corporations* (1932).

## I. THE ARTICLES OF INCORPORATION:

- A. See the statutes and Dean Williams' article, *supra*.
- B. Here it is important for the lawyer to analyze the particular needs and situation of the proposed corporation, the position of the incorporators, and the financial conditions in the locality to determine what will be the best financial set-up and stock structure for the corporation.

II. THE MEETING OF THE INCORPORATORS: This meeting is usually upon waiver of notice. This is the first step in the process of placing the new corporation upon its own feet and putting it in motion under its own power and control.

- A. Elect a temporary chairman and secretary for the meeting.
  - 1. The secretary makes a report of the filing and recording of the articles of incorporation.
  - 2. A copy of the articles is also filed and made a part of the minutes of the meeting.
- B. Make arrangements to get stock holders.
  - 1. The secretary presents to the meeting a subscription list showing the amount of the stock subscribed for and the names of the subscribers.

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<sup>1</sup> This article is comprised of notes from a lecture given by Professor Carl B. Rix of the School of Law, Marquette University.

N.B. It is not necessary to have any amount paid in on the subscription at this meeting.

2. A resolution is adopted accepting the subscription list. This binds the subscribers, the subscription being merely an offer.

N.B. These subscribers are now the stockholders of the corporation and legal liability attaches.

- C. Provide for the giving of notice for the meeting of the stockholders. There must either be notice given according to the statute or there must be waivers of notice. See sec. 180.06, Wis. Stats.
- D. Adjourn the meeting. Now the incorporators, as such, are out of the picture. The control of the corporation is now in the hands of the stockholders.

III. THE MEETING OF THE STOCKHOLDERS: As a practical matter this meeting is usually held on the same day of the incorporators' meeting and is upon waiver of notice.

- A. Elect temporary chairman and secretary.
- B. Elect the directors (three or more). They must be stockholders.

N.B. The directors choose or elect the officers. The president must be a director. Sec. 180.13, Wis. Stats. If the vice-president is to be empowered to exercise the duties of the president upon certain occasions it is wise to choose him from among the directors.

- C. Draft and adopt the by-laws. Make them as brief as possible.
- D. The stockholders or the directors can issue a call for the payment of the stock subscriptions.

1. If the payment is to be made in property or in property and cash:

- a. The subscriber must make an offer in writing to turn his property over in payment of all or part of his subscription.

- b. It is presented to the meeting.

- c. A resolution is adopted to accept the offer and issue the stock to the offeror or his nominees.

2. If the payment is to be in cash the call is usually made at the director's meeting. See IV, C. *infra*.

NB. The records of the corporation must show that each issue of stock is fully paid for as the call is made.

- E. Other special procedure.

1. Adopt the form of the stock certificate.

2. Authorize the purchase, renting, leasing of property, etc.

3. Designate the bank in the which the corporation is to do business.
4. And other matters depending on the nature of the corporation.

IV. THE DIRECTORS' MEETING: A quorum must be actually present to do business. They cannot act by proxy.

- A. Elect the regular corporate officers.
- B. Fix the salaries for the officers.
- C. If the stock subscriptions are to be paid in cash authorize the treasurer to issue a call.

NB. It is wise to again present the offer to pay for the stock in property and have it again accepted to cut off any possibility of argument over the sufficiency and validity of the acceptance.

- D. Where no-par stock is to be issued the directors should fix the value of each share in order to determine the capital of the corporation. Such value must be paid in as done with par stock.
- E. Other routine business depending upon the nature of the corporation.

The attorney must study the Blue Sky Law, Chap. 189, Wis. Stats., to determine whether the approval of the public service commission is necessary in order to issue the stock of the corporation. Under the law in effect at this date you must have the stock issues approved before you can take subscriptions. It will be necessary to follow closely the results of the present session of the legislature. Because of the economic conditions it will be extremely probable that the Blue Sky Law will be materially altered in the near future.

It will also be necessary for the attorney to examine the state and federal statutes to determine the necessary stock tax to be paid on the issuing of the stock of the corporation. At the present time it is necessary to obtain tax stamps from the federal government for each certificate of stock, or face a penalty for such omission.

It is to be remembered that the lawyer for the corporation shall have all the necessary resolutions, forms, and the by-laws drawn up for presentation at the proper meeting. These should be drawn up in skeleton form and submitted to the proper meeting for correction, additions, adoption or rejection.