

MINUTES OF FIRST MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The first meeting of the Delaware Corporation Law Study Committee was held at the Hotel DuPont, Wilmington, Delaware, on the 21st day of January, 1964, at 1:00 P. M.

Present: Former Chief Justice Clarence A. Southerland
Secretary of State Elisha C. Dukes
Messrs: S. Samuel Arsht
Henry M. Canby
Richard F. Corroon
David H. Jackman
Alfred Jervis
Irving Morris
Margaret S. Storey

Former Chief Justice Clarence A. Southerland was elected Chairman, Richard F. Corroon was elected Vice-Chairman and Margaret S. Storey was elected Secretary of the Committee.

The Chairman and the Secretary thereupon entered upon the discharge of their duties.

The Committee discussed the advisability of making a comprehensive study of the Delaware Corporation Law with the possibility of revising the law so as to make it comparable with recently enacted legislation in other states. It was decided that members of the Committee should make inquiries of other law firms and corporations, then report their findings at a later meeting of the Committee.

Mr. Canby was requested to contact Chancellor Seitz about the possibility of retaining Professor Ernest Folk of the University of North Carolina to assist in the study of the Delaware Corporation Law.

Upon motion, duly made, seconded and carried, the meeting adjourned, subject to the call of the Chairman.

Margaret A. Storey
Secretary

MINUTES OF SECOND MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The second meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter & Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on February 25th, 1964, at 11 o'clock A. M.

Present: Former Chief Justice Clarence A. Southerland,
Chairman of the Committee
Secretary of State Elisha C. Dukes
Judge Daniel L. Herrmann
Messrs: S. Samuel Arsht
Henry M. Canby
Richard F. Corroon
Alfred Jervis
Irving Morris
Margaret S. Storey

Since the last meeting, the Chairman had sent each member of the committee a copy of an excerpt from a letter from Professor Ernest Folk, School of Law, University of North Carolina, Chapel Hill, North Carolina, in reply to a letter written to him by Chancellor Seitz at the request of Mr. Canby. A copy of this excerpt has been placed in the minute book.

After a discussion of the qualifications of Professor Folk, and the probably salary he would receive, it was moved by Judge Herrmann that he be asked to come to Delaware. The motion was seconded by Mr. Dukes and unanimously carried. The Chairman of the Committee was instructed to write Professor Folk asking him to come to Delaware to discuss the Corporation Law.

It was decided to request Professor Folk in his study of of the law:

1. To take an overall survey of the statute so there would be no conflict between various sections;
2. To ascertain what other states have to attract corporations that we do not have;
3. What his recommendations would be for amending our law.

A short discussion was held regarding the sequestration law and it was decided to ask Professor Folk to also consider this law, although it is not a part of the corporation law.

Mr. Dukes asked what the deadline would be for completion of the study and it was felt by most of the members that Professor Folk would complete it during his summer vacation so that any amendments could be introduced at the next session of the Legislature.

Mr. Corroon suggested the Corporation Law Committee of the Bar Association be asked to assist this committee.

Mr. Jervis suggested that any questions received by this committee be submitted to the Law Committee of the Bar Association for their comment.

The meeting thereupon adjourned, subject to the call of the Chairman.

Walter H. Stacey
Secretary

MINUTES OF MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

March 20, 1964

A meeting of the Delaware Corporation Law Study Committee was held in the offices of Berl, Potter and Anderson, Delaware Trust Building, Wilmington, Delaware, on March 20, 1964.

The meeting was called to order at 11:00 A. M. by former Chief Justice Clarence A. Southerland, Chairman of the Committee. Others present were:

Elisha C. Dukes, Secretary of State
Judge Daniel L. Herrmann
S. Samuel Arsht, Esquire
Richard F. Corroon, Esquire
Alfred Jervis
~~Irving Morris, Esquire~~
David H. Jackman
Henry M. Canby, Esquire
Professor Ernest L. Folk, III

The Committee interviewed Professor Ernest L. Folk, III, questioning him on his views of the Delaware Corporation Law and the desirability of possible revisions in order to make the Delaware Law more efficient from a legal and business standpoint. After discussion, the following motion by Mr. Canby, seconded by Mr. Dukes, was adopted with Mr. Jervis dissenting:

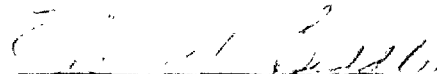
RESOLVED, that the Committee employ Professor Ernest L. Folk, III, for the purpose of making a survey of the Delaware Corporation Law and comparing it with the Corporation Law in other jurisdictions. Upon completion of said survey, such recommendations as he may deem beneficial to improved Corporation Law in the State of Delaware shall be submitted to the Committee.

The fee for this survey was fixed at \$5,000.00 plus expenses. The

time of completion of the survey was set for September, 1964, so that ample time could be given to the preparation of legislation for introduction at the next session of the General Assembly.

There being no further business, the meeting adjourned at 12:30 P. M.

Respectfully submitted,


Eloise A. Biddle,
Acting Secretary

MINUTES OF FOURTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The fourth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on July 14, 1964.

The meeting was called to order at 10:30 A. M. by former Chief Justice Clarence A. Southerland, Chairman of the Committee. Other present were:

Judge Daniel L. Herrmann
S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Mr. Alfred Jervis
Mr. David H. Jackman
Irving Morris, Esq.
Margaret S. Storey

The Chairman stated he had talked with Professor Folk by telephone and advised him that the format of the report was acceptable. The committee agreed with the Chairman.

The Chairman stated the next business before the meeting was to revise and approve the letter to be sent to law firms. Mr. Jervis read a portion of a letter from his executive office, objecting to reference being made to Professor Folk in the letter to be sent to the law firms. After discussion, it was agreed the last clause of the first paragraph of the letter referring to Professor Folk, be omitted. Judge Herrmann suggested an addition be made to the letter advising the law firms of the reasonableness of Delaware taxes and fees applicable to corporations. Mr. Morris discussed the possibility of broadening

the letter so that the law firms would know that Delaware is thinking about the problem and Mr. Jackman stated we should publicize the serious effort being made to attract corporations. The Chairman agreed to follow the suggestions and redraft the letter.

Mr. Morris requested a copy of the letter be sent to several accounting firms and certain additional legal firms. After discussion it was agreed to send a copy to one of the law firms and to three of the large accounting firms as well as to the Delaware Society of Certified Public Accountants.

At the request of the Chairman, Mr. Jervis and Mr. Jackman agreed to furnish lists of attorneys and General Counsel representing the larger Delaware corporations. Mr. Canby agreed to furnish a list of the law firms previously contacted.

Mrs. Storey offered to have the letters prepared and mailed by the Corporation Department of the office of the Secretary of State, the original signed copy of the letter to be furnished by the Chairman. Mr. Dukes had previously advised the cost of stationery was to be paid from the budget allowance for the committee.

The Chairman stated the screening of the replies would be time consuming, whereupon Mr. Jackman and Mr. Jervis offered to screen the replies and make a report to the committee.

The members discussed various sections of the report made by Professor Folk. Mr. Jervis, Mr. Jackman and Mrs. Storey agreeing that the Section providing for reservation of names not be included in the law. Mr. Jackman emphasized that Delaware should not adopt the Model Act because we do not want to be a

"me too" State in view of the fact that in the past most of the other States had copied our laws and that we should be a leader not a follower.

It was moved by Mr. Jackman and seconded by Judge Herrmann that recordation as presently practiced should be continued, subject however to a change in the effective date. The effective date to be the date a certificate is filed with the Secretary of State, provided a certified copy is recorded within ten days after such filing. If it is not recorded, the effective date is to be the date of filing with the Secretary of State.

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Mr. Morris emphasized that a thorough study should be made of the law so that whatever changes are to be made, should be made at this time, rather than make changes each year. He also suggested the data furnished by Professor Folk be divided among the members of the committee so that each member could concentrate on one portion and report at the next meeting.

The chairman then assigned various sections of the Folk report to each member of the committee, the members to report at the next meeting. The following is the list of assignments of the several subjects:

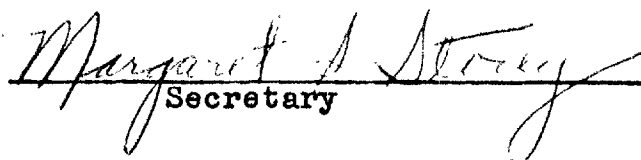
Subchapter 1.

Section	Subject	Pages of Report	Member Assigned
103	Filing & Recording	1-8	Mr. Dukes Mrs. Storey Former Chief
	" "	4 (Phrasing)	Justice Southerland
105	Certificate as Evidence	8-9	Mr. Arsht
101	Corporate Purposes	10-11	Former Chief Justice Southerland
	Incorporation Procedure	11-13	Mr. Arsht

Section	Subject	Pages of Report	Member Assigned
102	Contents of Certificate	13-21	Mr. Canby
106	Beginning of Existence	21-22	Mr. Jervis Mr. Jackman
(none)	Reservation of Name	23-26	Mr. Dukes Mrs. Storey
102,107- 108	Organization	26-29	Mr. Jervis Mr. Jackman
109, 122	By-Laws	30-35	Judge Herrmann
	Subchapter 2.		
121-122	Powers	36-46	Mr. Arsht
127	Ultra Vires	47-50	Mr. Morris

The chairman tentatively set the date for the next meeting as August 3rd, 1964, at 10:30 A. M.

There being no further business, the meeting adjourned.



 Secretary

MINUTES OF FIFTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The fifth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on August 3, 1964.

The meeting was called to order by former Chief Justice Clarence A. Southerland, Chairman of the Committee.

Others present were:

S. Samuel Arsht, Esq.
Irving Morris, Esq.
Margaret S. Storey

The Chairman stated that because of lack of a quorum, no final action could be taken but certain matters could be discussed and tentative conclusions reached.

The Chairman stated that replies were beginning to arrive from law firms to whom letters had been sent. He mentioned one from a law firm in Atlanta, Georgia regarding sequestration.

Mrs. Storey gave her views on recordation (pages 1 to 8 of the Folk draft) and the members present agreed that recordation should be continued as at present, subject to the following change:

The effective date of the creation of the corporation would be deemed to be the date of filing with the Secretary of State, provided that the recordation take place within ten days thereafter. If the certified copy is not recorded within ten days, the effective date would be the date of filing with the Secretary of State.

Re: RESERVATION OF DOMESTIC CORPORATE NAME
(Pages 23 to 26 of the Folk draft)

Oral or written application, subject to renewal for thirty days, was approved in principal, subject to redrafting the language after consultation with the Corporation Department.

Re: REGISTRATION OF NAMES FOR FOREIGN CORPORATIONS

Having reviewed the section of the Folk draft dealing with registration of names of foreign corporations, it was agreed to defer any tentative decision pending a meeting of a quorum of the Committee.

Mr. Morris suggested an amendment to Section 102, protecting from use by a Delaware corporation, the name of a foreign corporation qualified to do business in Delaware. It was tentatively agreed that this was a good idea and that appropriate language should be added to Section 102 (a) (1).

The members present tentatively approved the redraft of Sections 107 and 108 (pages 26 to 29 of Folk draft) relating to the organization of corporations - subject to the deletion of the word "date" in the first line of redrafted Section 108 (a).

Mr. Morris discussed Ultra Vires with the other members present.

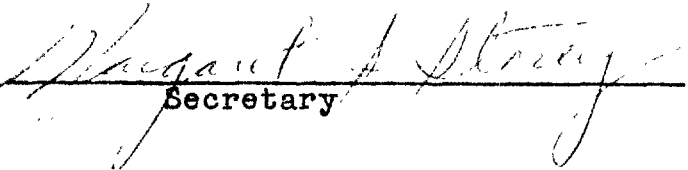
The Chairman stated he had assigned to himself the Folk draft (Pages 51 to 53) dealing with directors, Section 141 and 223, also Section 142 dealing with officers (Pages 66 to 75 of the Folk draft).

Since the receipt of these drafts, Professor Folk has submitted two additional drafts. The Chairman assigned to Mr. Corroon, INDEMNIFICATION OF DIRECTORS AND OFFICERS (Pages 76 to

96 of the Folk draft. STOCKHOLDERS DERIVATIVE SUITS (Pages 97 to 109 of the Folk draft) was assigned by the Chairman to Mr. Morris.

The Chairman stated he would be on vacation beginning the week of August 10th, therefore, Mr. Corroon, the Vice-Chairman would call the next meeting.

There being no further business, the meeting adjourned.


Secretary

MINUTES OF SIXTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The sixth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on September 3, 1964, at 10 o'clock A. M.

The meeting was called to order by Richard Corroon, Esq., Vice-Chairman of the committee who acted as Chairman of the meeting. Others present were:

S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Prof. Ernest L. Folk, III
Mr. Alfred Jervis
Mr. David H. Jackman
Irving Morris, Esq.
Margaret S. Storey

The Chairman stated that a number of reports had been received from Prof. Folk and that Chief Justice Southerland would assign the remaining sections of the report upon his return from vacation.

Mr. Jervis advised the committee he is sending a copy of each report to his executive office for study and comment.

Prof. Folk stated his report is approaching completion and he discussed various subjects with the members of the committee but no action was taken on any of them.

Mr. Canby opposed the use of accounting terms in any part of the law. Section 244 was discussed and it was suggested a reduction of capital could be through directors action without consent of stockholders.

Mr. Arsht discussed the determination of liquidating value of stock and it was tentatively agreed not to follow the policy of the S.E. C. on this.

Mr. Morris gave his opinion that too many changes in the law would have an adverse effect and the committee should make only changes which it considered absolutely necessary.

Prof. Folk discussed the abolishment of appraisal rights since a proxy statement would furnish stockholders with pertinent information. Mr. Arsht discussed elimination of appraisal rights where there is an established market price. Mr. Morris questioned how many cases there had been recently dealing with appraisal.

A brief discussion was held on sequestration, foreign corporations, resident foreign corporations and directors setting their own compensation.

There being no further business, the meeting adjourned at 12:45 o'clock P. M.


Secretary

MINUTES OF SEVENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The seventh meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on December 15, 1964, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the committee. Others present were:

S. Samuel Arsht, Esq.
Richard F. Corroon, Esq.
Hon. Elisha C. Dukes
Hon. Daniel L. Herrmann
Mr. Alfred Jervis
Irving Morris, Esq.
Margaret S. Storey

Mr. Corroon advised the committee that pursuant to a telephoned invitation, he had attended a meeting of the Corporation Committee of the Bar Association of the City of New York. He stated eighteen members of such committee attended the meeting and they showed considerable interest in the proposed revision of the Delaware Corporation Law and inquired if they could be of any assistance. Mr. Corroon stated he did not think it practicable at the present time but suggested a copy of the Folk report be sent to such committee and also a draft of the proposed law, for their comments. Mr. Corroon was advised by the Corporation Committee of the Bar Association of the City of New York that they have always felt Delaware is the best state in which to incorporate.

Mr. Morris' comments on Professor Folk's material concerning shareholders derivative suits at pages 97 through 109 of his report were approved.

SECTION 101.

Mr. Arsht suggested Section 101 be revised as follows:

(a) Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile or state of incorporation, may organize a corporation under this chapter by filing a certificate of incorporation with the Secretary of State.

(b) A corporation may be organized under this chapter to transact or conduct any lawful business or businesses, or to promote any legitimate objects or purposes.

(c) Subsection (b) shall not apply to municipal corporations, banks, or corporations for charitable, penal, reformatory, or educational purposes sustained in whole or in part by this State. Corporations for constructing, maintaining and operating public utilities, whether in or outside of the State, may be organized under this chapter, but corporations for constructing, maintaining and operating public utilities within this State shall be subject to, in addition to the provisions of this chapter, the special provisions and requirements of Title 26 applicable to such corporations.

It was moved, seconded and carried that the redraft by Mr. Arsht of Section 101 as dealt with on page 13 of the Folk report, be approved.

SECTION 102.

No action was taken on Section 102(a) (1) pending consideration by the Committee of Professor Folk's suggestions as to reserving and registering corporate names beginning on page 23 of his report.

102(a) (2) amended to read as follows:

The address and mailing address, if different (which shall include the street, number, city and county) of the corporation's registered office in this State, and the name and address of its registered agent.

102 (a) (3) to be retained as is.

102 (a) (4) amended to delete the fourth sentence from the end, reading as follows:

"In each case the certificate of incorporation shall also set forth the minimum amount of capital with which the corporation will commence business, which shall not be less than \$1,000."

102 (a) (5) to be retained as is.

102 (a) (6) to be retained as is.

102 (a) (7) to be retained as is.

102 (b) (1), (2) and (3) to be retained as is.

102 (b) (4) amend to read as follows:

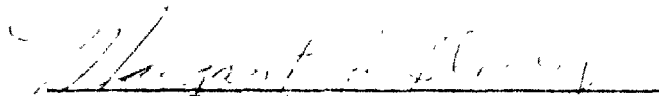
Provisions requiring for any corporate action, the vote of a larger portion of the stock or any class thereof, or of the directors, that is required by this chapter.

102 (c) to be retained as is.

It was moved, seconded and carried that the redraft of Section 102, be approved.

Mr. Corroon comments on indemnification of directors and officers were discussed but action was deferred until the next meeting.

There being no further business, the meeting adjourned.


Secretary

MINUTES OF EIGHTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The eighth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on January 13, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Richard F. Corroon, Esq.
Mr. Alfred Jarvis
Margaret S. Storey

The Chairman mentioned the letter from Chancellor Seitz and it was decided to take this subject up at the next meeting or when Mr. Morris was present.

It was decided that copies of the minutes of the meetings of the Committee not be sent to Prof. Folk but that a report would be sent to him at a later date.

Under IDEMNIFICATION OF OFFICERS AND DIRECTORS, it was discussed whether or not the statute should authorize Directors to pay fees to counsel during progress of litigation. Mr. Corroon advised he would send a letter to each member with his comments on this subject.

Section 141 (a) to be retained as is.

Section 141 (b) Page 52 of Folk report.
Amendment incorporating a clause permitting the freezing of the number of directors in the certificate, was approved.

Prof. Folk's suggestion against shortening the term of directors was disapproved as unnecessary.

Recommendations in paragraph 4 on page 53 of the Folk report was deemed unnecessary and was not approved.

Referring to Topic 4 page 53 of the Folk report, the Committee was of the opinion that no qualification amendment respecting directors was necessary.

RESIGNATION OF DIRECTORS - Topic 4 - Page 54 of Folk Report.

The committee approved a transfer of the holdover provisions of Section 141 (b) - third sentence, and the transfer of the future resignation provisions, being the last sentence of Section 223, to a new section or subsection to be drafted at a later date.

QUORUM - page 61B and 62 of the Folk report.

The last sentence of 141 (b) was approved with amendments to the language to be redrafted by Mr. Corroon.

141 (c) COMMITTEES

Prof. Folk's recommendations were approved as set forth on page 64 of his report.

141 (d) to be retained as is.

141 (e) to be retained as is.

141 (f) to be retained as is.

141 (g) The draft on page 61 of the Folk report was approved.

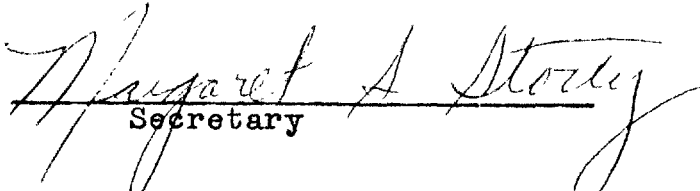
Folk Report - Pages 55 and 56.

The Committee agreed to all the suggestions and designated the Chairman to redraft the language accordingly.

It was deemed unnecessary to further amend Section 223 with reference to the suggestions on page 56 - the latter part of paragraph 2.

It was recommended by Mr. Canby that the meetings be held every two weeks in order to expedite the work of the committee. This recommendation was approved.

Upon motion, duly made, seconded and carried, the meeting adjourned.


Secretary

MINUTES OF NINTH MEETING
OF
DELAWARE CORPORATION LAW REVISION COMMITTEE

The ninth meeting of the Committee was held at the offices of Berl Potter & Anderson, Delaware Trust Building, Wilmington, Delaware, on January 27, 1965, at 10:00 o'clock A.M.

There were present the following:

Clarence A. Southerland, Chairman
Henry M. Canby
Alfred Jervis
David H. Jackman

The Chairman noted that a quorum was not present, but it was determined to proceed with the consideration of items on the agenda with the understanding that any decisions were tentative and subject to review at the next meeting at the request of any member.

The Committee considered a proposed amendment to Section 275 of the Delaware Corporation Law, drafted by William S. Potter, Esquire, dealing with a specific problem concerning close corporations. After discussion, at which

Mr. Potter was present, it was resolved that a copy of his draft should be sent to Professor Folk for his consideration and comment, with the request that he give the Committee his views before the next meeting of the Committee on February 10. In this connection, the Committee also considered two suggestions by Mr. Dederick, of The Corporation Trust Company, relating to a question of arrangement and relating to a question of procedure upon dissolution.

The Committee considered the redraft of the language of Section 223 contained in the report of the Chairman recently furnished the members. This redraft was approved, subject to the insertion of the word "such" before the word "directors" in subparagraph (c), seventh line.

The Committee next considered the matter of the removal of directors, Section 142, pages 56 to 64 of the Folk report. It was resolved that this question might be best dealt with by provisions in the certificate of incorporation of any corporation and that a statute specifically dealing with the matter was undesirable, as possibly leading to too much complexity.

The Committee next considered discussion of the classification of directors, other than staggered directors, Professor Folk's report, pages 59, 60. It was resolved that no statute

with respect to the subject was required or desirable since the subject could be most satisfactorily dealt with in that portion of the certificate of incorporation creating such classes of directors.

The Committee considered the recommendation of Professor Folk with respect to so-called super-statutory vote of directors, pages 62-63. It was resolved that such a provision, as recommended by Professor Folk (page 63), was desirable and that it should be inserted at the concluding sentence of the present Section 141(a).

The Committee considered the question of waiver of notice of directors meeting by an attending director, pages 63, 64 of the Folk report. In view of the great variety of circumstances under which this question might arise, it was resolved that no statutory regulation of the matter was desirable.

The Committee considered the suggested amendment to Section 142(b) relating to multiple office holding; Folk report, page 66. It was of opinion that there was no longer reason for prohibiting dual office holding in respect of president and secretary and, therefore, favored the elimination of the restrictive clause in the section but were also

of the opinion that before any action should be taken, the Committee should have the benefits of comment from the Secretary of the Corporation Department.

The Committee considered the proposed amendment to Section 142(e), Folk report, page 66, respecting the filling of vacancies occurring in offices filled by shareholder action. These being rare cases, the Committee was of the opinion that the corporation should regulate the matter by by-law. Because the suggestion of Professor Folk would require stockholder action to fill the vacancy, it was disapproved since it would deny to the corporation the right to regulate the matter by by-law.

The Committee considered the proposed amendment in paragraph (3) on page 66 of the Folk report with respect to contract rights of an officer and disapproved it as being unnecessary.

The subject of interested directors, Folk report, pages 67 ff., was passed until the next meeting.

The Committee considered the draft of a new provision concerning execution of instruments, submitted with the Chairman's report of July 17, 1964. The language of the redraft was approved with the following changes:

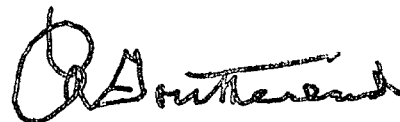
In paragraph (b)(2), strike out the word "if" and substitute the phrase "if it shall appear from the instrument that".

In paragraph (b)(3), the same change.

However, the Committee determined that further consideration should be given to the propriety of such a new section in the light of the fact that Mr. Jervis said twenty-three other sections contain provisions respecting the execution of instruments.

It was the consensus that further consideration should be given to the desirability of amending all such other sections or to some other method of reconciling the proposed new statute with the other sections of the law.

The Committee determined that the agenda for February 10 should consider first, the matter of close corporations and the proposed statute drafted by Mr. Potter; second, the matter of indemnification of officers; third, the matter of interested directors; and fourth, the matter of the new statute respecting execution of instruments.



Chairman

MINUTES OF TENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The tenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on February 10, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the committee. Others present were:

Henry M. Canby, Esq.
Richard F. Corroon, Esq.
Hon. Elisha C. Dukes
Irving Morris, Esq.
Margaret S. Storey

Mr. Dukes stated a letter had been received from Justice Herrmann resigning from the committee and that Clair John Killoran had been appointed a member to replace Justice Herrmann.

Upon further consideration of the Prof. Folk report on the Potter-Eaton statute and Mr. Eaton's letter of February 9, it was the opinion of the Committee that the statute as drafted and as proposed to be amended by Mr. Eaton, should be disapproved, unless there is added to the statute a clause conferring discretion as to relief upon the Court of Chancery. The statute would have the approval of the Committee, subject to review of the subsection in connection with Prof. Folk's section on "Close Corporations".

INDEMNIFICATION OF DIRECTORS AND OFFICERS

After a discussion of on the amendment contained in Mr. Arsht's letter of January 21, 1965, it was voted four to one to disapprove such amendment.

Mr. Corroon's draft, annexed to his report of November 13, 1964, was approved, subject to the deletion from sub paragraph (a) of his draft, of the 15th, 16th and 17th lines thereof (except the last word "the"); and also subject to the deletion from the 11th line of paragraph (b) of his redraft of the words "in any case in relation to" and the substitution of the term "in respect of"; and subject to the insertion in the 9th line of paragraph (b), after the phrase "in connection with" of the phrase "the defense or settlement of".

It was understood that Mr. Corroon would make a redraft of his draft and send a copy to the members of the Committee.

Prof. Folk's draft of the Interested Directors statute was adopted with everything in Section (a) after the 9th line (page 68) being deleted and a comma being inserted after the word "purpose".

The decision of the meeting of January 27th respecting 142 (b) (Folk report Page 66) was approved. This is to eliminate from 142 (b) the clause "other than the offices of President and Secretary".

The draft of a new statute on execution of instruments annexed to the Chairman's report on July 17th, page 4, was approved subject to the following changes:

In line 2 insert after the word "State" the following phrase:
"by any corporation organized under this chapter".

In paragraph (b) (2) insert after the word "if", the phrase
"it shall appear from the instrument that".

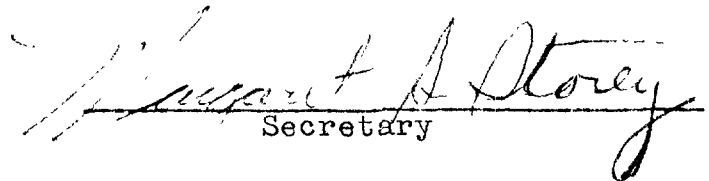
In paragraph (b) (3) insert after the word "if" the phrase
immediately above quoted.

The Director of the Corporation Department was requested to furnish the Committee with a list of other Sections of the Corporation Law which specify the method of executing papers to be filed by Delaware corporations. Mr. Jervis of The Corporation Trust Company was to be requested to furnish a similar list. *

Mr. Dukes request that at the next meeting of the Committee, the problem of collection of franchise taxes be discussed. He further stated that Mr. E. Hobson Davis, State Tax Commissioner, would be present at said meeting.

At the request of several members, it was determined to schedule the meetings of the committee for alternate Tuesdays at 10:30 A. M., instead of on alternate Wednesdays.

The meeting thereupon adjourned.


Secretary

MINUTES OF ELEVENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The eleventh meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on February 23, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Mr. Richard F. Corroon, Vice-Chairman of the committee. Other present were:

S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Hon. Elisma C. Dukes
Mr. David H. Jackman
Mr. Alfred Jervis
Irving Morris, Esq.
Margaret S. Storey

Also present were Mr. E. Hobson Davis, State Tax Commissioner and Mr. Charles A. Glennon, Director Taxation and Statistics.

Mr. Dukes stated that in view of the close relationship between the assessment of franchise taxes and the collection of said taxes, most interested parties are of the opinion that both phases should be handled by the same Department. At the present time the assessment is made by the office of the Secretary of State in Dover and the collection is handled by the State Tax Department in Wilmington. He further stated that corporations organized in Delaware would receive better service if one Department handled all corporation matters.

After a brief discussion it was unanimously voted that the Corporation Department of the Office of the Secretary of State would be the logical Department to handle this work.

It was also decided to change the minimum tax from \$5.50 to \$10.00 so that all corporations with authorized stock up to 1,000 shares would be assessed \$10.00 rather than the \$5.50 or \$11.00 they are now assessed.

Mr. Arsht offered to draft the bill making the necessary changes in the Corporation Franchise Tax Law, so it could be introduced in the present Session of the State Legislature.

Mr. Davis and Mr. Glennon then left the meeting with the understanding that Mr. Dukes, Mr. Arsht and Mrs. Storey would meet later in the day to discuss the matter with the members of the State Tax Board.

MEETINGS, ELECTIONS, VOTING AND NOTICE.

Justice Southerland's report of September 16, 1964, of the Polk report, pages 110-155, was discussed.

Section A (page 111) was approved as written, and his recommendation to transfer to Section 141 (b) the reference to directors, was also approved.

Section B (page 115) was approved.

Section C (page 119). It was decided this was a substitution for Section 224 of the Corporation Law, however (a) (b) and (c) on page 120 of the report should be included with the following changes:

(b) (1) (page 121) fourth line to read "notice is given, if notice is waived, at the close"

(c) (page 121) third and fourth lines to read "of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting."

Section D was approved - to become Section C.

Section E. The Committee approved the suggestion that Section 212 be amended to include the material in the first full paragraph on page 124 of the Folk report.

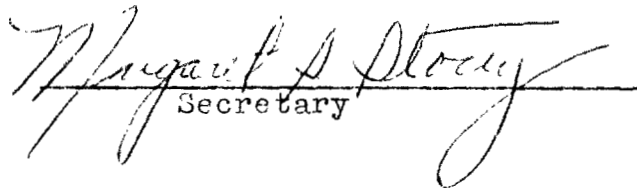
Paragraph 1 - "Definition" of Proxy was disapproved as unnecessary.

Paragraph 2 - Revocation of Proxy was disapproved.

Paragraph 3 - Disapproved.

CUMULATIVE VOTING -(Page 134). Mr. Arsht requested discussion of this section be deferred until he had time to study the section.

The meeting thereupon adjourned.


Secretary

MINUTES OF TWELFTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The twelfth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on March 9th, 1965, at 10:30 o'clock A. M.

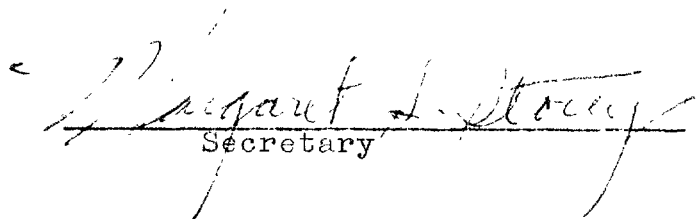
The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the committee. Others present were:

S. Samuel Arsht, Esq.
Richard F. Corroon, Esq.
Hon. Elisha C. Dukes
Mr. David H. Jackman
Mr. Alfred Jervis
Clair J. Killoran, Esq.
Irving Morris, Esq.
Margaret S. Storey

After discussion, the Committee approved the draft of the franchise tax law as prepared by Mr. Arsht, amended by Mr. Corroon and further amended by the various changes adopted at this meeting, all as set forth in a redraft to be prepared by Mr. Arsht. Copy of such redraft to be attached to these minutes.

It was moved and seconded that Prof. Folk be requested to prepare a statute on Close Corporations for which he would receive additional compensation.

The meeting thereupon adjourned.


Secretary

MINUTES OF THIRTEENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The thirteenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on March 23rd, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the committee. Others present were:

S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Richard F. Corroon, Esq.
Hon. Elisha C. Dukes
Mr. Alfred Jarvis
Margaret S. Storey

The committee adopted a resolution approving the draft of the franchise tax law as prepared by Mr. Arsht with the changes made to and approved by the committee.

The suggestions of the Folk report (pages 135-136) concerning Sections 215 and 216 were approved.

The suggestions of the Folk report (page 137) were disapproved.

The suggestions of the Folk report (pages 134-135) concerning Section 214, were considered and disapproved.

Suggestion No. 3 on page 138 of the Folk report dealing with a statute covering voting of stock in the name of partnerships was disapproved.

Suggestion No. 4 on page 138 of the Folk report concerning the incorporation of the Model Act for voting by corporation owning snares, was disapproved.

Suggestion No. 5 on pages 139 and 140 of the Folk report with respect to the voting by a corporation of its own shares was

disapproved except that the suggestion of incorporating the language in the first six lines on page 140 was approved.

Suggestion No. 6 (page 141) of the Folk report relating to the voting of shares called for redemption was approved with the following amendment:

In the 7th line thereof, strike out the words "deposited with a bank or trust company with" and change "irrevocable" to "irrevocably".

In the 8th line strike out the three words "instruction and authority" and insert in lieu the words "deposited or set aside".

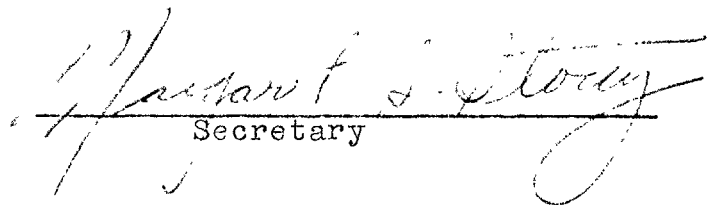
The recommendations in paragraph No. 7, pages 141 to 145 of the Folk report were approved including the provisions of the Connecticut statute set forth on page 144.

The suggestion in paragraph No. 8 on page 145 of the Folk report relating to "survivors" was disapproved.

The suggestion contained in paragraph No. 9 on page 145 of the Folk report relating to voting by minors or life tenants was disapproved.

The suggestion in the footnote on page 145 of the Folk report relating to a Connecticut statute respecting the liability of Connecticut corporations in certain voting matters was noted and consideration thereof was deferred.

The meeting thereupon adjourned.


Secretary

MINUTES OF FOURTEENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The fourteenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on April 6, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esq.
Hon. Elisha C. Dukes
Mr. Alfred Jervis
Irving Morris, Esq.
Margaret S. Storey

Also present were Messrs. Charles S. Compton, Charles F. Richards, Jr. and Walter Stapleton.

The meeting considered the report of Prof. Folk (pages 145-149) with respect to inspectors or judges of election. It was the concensus that no amendment was required or desirable.

It was the concensus that on the subject of the voting rights of bondholders, (page 149) the Folk recommendation of inclusion of the phrase "or other obligations issued or to be issued by the corporation" in the fifth line of Section 221, be approved. Also the twelfth and thirteenth line should be amended to read "such holder of bonds, debentures or other obligations".

The committee considered the Folk report (Par. N - Page 150) concerning the Review of Elections, Sections 225 and 227 of the Statute. It was the concensus that no change was needed or desirable.

The committee decided to amend the language of the heretofore approved redraft of Section 223 by inserting in the fifth line of subsection (a) after the word "quorum", the phrase: "or by a sole remaining director";

The committee considered the suggestion of an amendment to Section 228 (par. P - Page 151) respecting the expansion of the provision for the written consent of stockholders in lieu of a meeting. The suggested amendment was disapproved.

The committee considered the various proposed amendments to Subchapter 14, Foreign Corporations, listed in the Folk report pages 281 to 287.

Suggestion 1. Foreign Corporation's powers, was disapproved.

It was agreed that the suggestion that a statement of purposes of a foreign corporation, contained in Paragraph 2 on page 281 of the report, be disapproved.

All the provisions of paragraph No. 3 (pages 282-283) were disapproved.

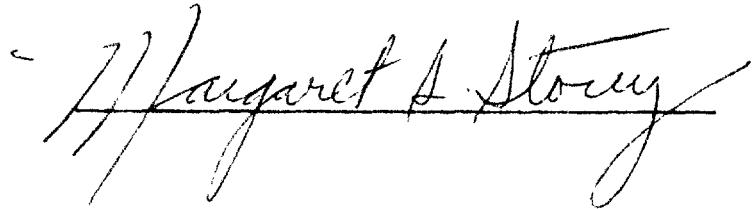
The suggestion contained in paragraph No. 4 with respect giving the Attorney General injunctive powers against foreign corporations not qualifying, was approved.

The suggestion in the first numbered paragraph 5 (a) on page 284 prohibiting action by unqualified foreign corporations was approved. Also paragraph 5(b) validating their contracts and permitting defensive suits, was approved.

The suggestions to incorporate a definition of the phrase "Foreign Corporation" as set forth on page 285 of the report contained in the second numbered paragraph 5, was approved, together with necessary changes in Sections 341 (a) and 343.

The committee considered the suggestions for incorporation in the law of the provision for reinstatement of foreign corporations as set forth in paragraph No. 6 on page 286-287. It was agreed to in principal, subject to further examination by the Secretary of State, the Corporation Department and The Corporation Trust Company.

The meeting thereupon adjourned.

A handwritten signature in cursive script, reading "Margaret A. Story", written over a horizontal line. The signature is positioned to the right of the text "The meeting thereupon adjourned.".

MINUTES OF FIFTEENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The fifteenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on April 20th, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Charles S. Compton, Esq.
Richard F. Corroon, Esq.
Mr. David H. Jackman
Mr. Alfred Jervis
Irving Morris, Esq.
Margaret S. Storey

The Committee approved and recommended the enactment of the latest draft of the franchise tax law and agreed to write Mr. Dukes a letter advising of the approval by the Committee of such law.

The Committee was unanimously of the opinion that no provisions should be made in our law for Bearer Shares.

It was the concensus, in connection with the heretofore approved amendment embodying a uniform execution of instruments, that it should be rejected as undesirable. The Committee agreed that no listing of the major types of certificate of amendment was necessary or desirable, as mentioned in paragraph B. 1. page 175 of the Folk report.

It was further agreed that each Section providing for the execution of instruments required to be filed with the Secretary of State, should be amended to authorize the Chairman of the Board as one of the officers authorized to sign.

In connection with the subject of amendments before payment of capital, it was agreed that Section 241 should be redrafted to eliminate ambiguous language and Mr. Corroon prepared the following draft:

"The incorporators, prior to the election of directors, or a majority of the directors, if any have been elected and have qualified, of any corporation may, before the payment of any part of its capital, file with the Secretary of State an amendment or amendments to its certificate of incorporation, duly signed by the incorporators or by a majority of the directors, as the case may be, and duly acknowledged before an officer authorized by the laws of the place of execution to take acknowledgments, and a certified copy thereof shall be recorded in the office of the Recorder of the county in which the original certificate of incorporation was recorded. Upon so filing and recording the same, the certificate of incorporation of said corporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation was filed and recorded. Nothing herein contained shall permit the insertion of any matter not in conformity with the provisions of this Chapter."

It was agreed that the last line of the 6th sentence of Section 242 (d) (1) be amended to read "authorized by the laws of the place of execution".

It was further agreed that the appropriate amendment should be authorized to such Sections of the law as are similar to Section 242 in this respect.

It was agreed that paragraphs (a), (b) and (c) on page 176 of the Folk report, be disregarded.

It was agreed that Mr. Canby's suggestion on the bottom of page 2 of his report of February 18, 1965, clarifying the language with respect to class voting, be approved. (9th sentence of Section 242 (d) (1).)

It was further agreed that said 9th sentence of Section 242 (d) (1) should start a second paragraph to be numbered (d) II.

It was agreed that the suggested amendment on page 178 of the Folk report with respect to specification of an effective date for amendments be approved, subject the preparation of a draft by Mr. Canby.

It was agreed that the present provision for a composite certificate of incorporation be retained, being Section 104 of the law. *done*

It was agreed that the suggested provision for a restated Certificate of Incorporation, appearing on pages 179 to 180 of the Folk report, was desirable and should be approved; with a provision for the recording of the restated certificate in the County in which the corporation's principal office is located. *done*

Margaret A. Storey
Secretary

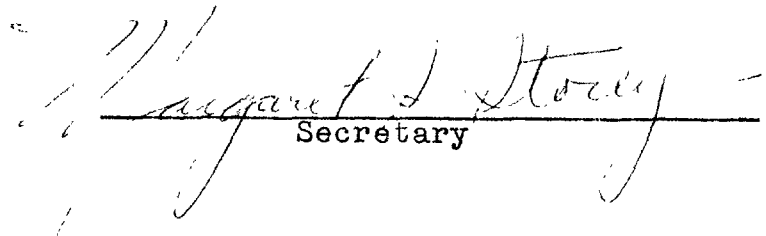
MINUTES OF SIXTEENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The sixteenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on May 4, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esq.
Richard S. Corroon, Esq.
Hon. Elisha C. Dukes
Mr. Alfred Jervis
Irving Morris, Esq.
Charles F. Richards, Jr., Esq.
Margaret S. Storey

After discussion of the report by Mr. Morris and his draft of Section 220 with reference to inspection of corporate records, his draft with certain changes was tentatively approved excepting the clause conferring right of inspection upon equitable stockholders. This clause, together with Mr. Morris' suggestion of a change or changes in Sections 219 and 220, were to be considered at the next meeting of the Committee. Mr. Morris was requested to circulate a redraft of his draft of the proposed statute.


Secretary

MINUTES OF SEVENTEENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The seventeenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on May 18, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esq.
Henry M. Canby
Richard F. Corroon
Hon. Elisha C. Dukes
Mr. David H. Jackman
Mr. Alfred Jervis
Irving Morris, Esq.
Walter Stapleton, Esq.
Margaret S. Storey

After discussion it was decided that Section 219 be amended in the respects as set forth in a redraft to be prepared and submitted by Mr. Corroon, copy of such redraft is attached to these minutes.)

Mr. Arsht's redraft of April 19 of Section 105 was approved with the change of the word "chapter" to "title".) *Done*

The suggested amendment of Section 106, appearing on page 22 of the Folk report, was considered and disapproved.

The redraft of Section 121 appearing on page 37 of the Folk report was considered and approved subject to redrafting of the fourth line of sub-section (a) as follows:

"chapter or by any other law or by the Certificate of Incorporation".

It was tentatively agreed that Prof. Folk's suggestion regarding power to adopt, amend and repeal by-laws, in that language (Folk report par. 6 - page 39) was desirable subject to consideration of a future report on by-laws.

It was tentatively agreed that draft No. 5 of Section 220 by Mr. Morris, be approved subject to further discussion.

WARTIME OR EMERGENCY BUSINESS as set forth on pages 40 and 41 of the Folk report, paragraphs (a), (b) and (c) were disapproved.

The amendment suggested on page 41 sub-paragraph (d) and the amendment suggested on page 42 sub-paragraph (e) of the Folk report were approved.

The suggested amendments contained in sub-paragraphs (f) and (g) on pages 42 and 43 of the Folk report were disapproved.

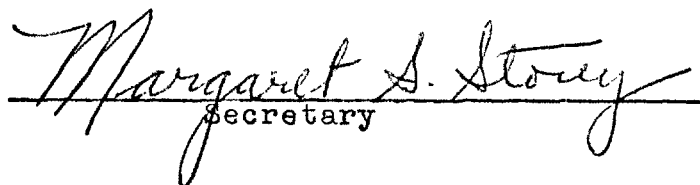
Section 123 - page 45 of the Folk report, was approved.

The suggested amendment to Section 102, set forth at the top of page 6 of Mr. Arsht's report (page 45A of the Folk report) was approved. Such amendment to be a new sub-section (d).

The suggestion for rewriting the provisions in the law containing Creditor Readjustment, Section 124, was disapproved. (Folk report page 46).

The suggested amendment to Section 126 (Folk report page 46) was disapproved.

It was decided that the next meeting of the Committee would be held on June 8 instead of June 1 because of the Memorial Day holiday.


Secretary

§ 219. List of Stockholders Entitled to Vote; Penalty for Refusal to Produce.

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city, town or village where the meeting is to be held ^{which} ~~and a~~ place shall be specified in the notice of the meeting, or, if not so specified, at the place where said meeting is to be held, and the list shall be produced and kept at the time and place of meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present. The [original or duplicate] stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders. Upon the willful neglect or refusal to produce such a list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting.

1 of the directors

MINUTES OF EIGHTEENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The eighteenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on June 8, 1965, at 10:30 o'clock A. M..

The meeting was called to order by Hon. Clarence A. Southerland, Chairman of the Committee. Others present were:

Henry M. Canby, Esq.
Richard F. Corroon, Esq.
Charles S. Compton, Esq.
Mr. David H. Jackman
Mr. Alfred Jervis
Margaret S. Storey

The committee first considered Mr. Corroon's draft of Section 219 previously approved and adopted two changes in the draft. In the eleventh line strike out the word "and" and insert "which". In the third line from the bottom insert the phrase "of the directors" after the word "refusal".

The recommendation in the Folk report for the adoption of a statute respecting Ultra Vires, pages 47 to 49, was disapproved. *done*

At the request of Mr. Jervis, the subject of maintaining duplicate stock ledgers in Delaware will be discussed at the next meeting.

The recommendation in the Folk report to amend the second sentence of Section 157 was considered and adopted with certain changes so that said sentence would read as follows: (page 237)

The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be such as shall be fixed and stated...

Proposal No. 2 (Folk report page 238) was disapproved. *1/20*

The committee approved the suggestion on page 239 of the Folk report (Section 158) in paragraph one subject to striking out from clause (2) of the suggested amendment, the phrase "by the corporation's transfer clerk and". *1/20*

The second suggestion on page 239 of the Folk report simplifying and clarifying the third sentence of 158 was approved. *1/20*

Suggestion No. 3 on page 240 of the Folk report respecting proposed transfer of Section 151(f) to Section 158 was disapproved. *1/20*

Suggestion No. 4 on page 240 of the Folk report that the word "stolen" be included in Section 167 and 168(a) was approved. *1/20*

The suggestion for the inclusion of a statutory provision respecting fractional shares (pages 240 to 242 of the Folk report) was approved in principal. The language on pages 241 and 242 to be redrafted by Mr. Corroon. *1/20*

The suggestion in paragraph 1 on page 242 of the Folk report to clarify the language respecting the unpaid balance of stock was approved. It was decided to eliminate the second phrase in line six of Section 163 beginning with "up to" and ending with the word "corporation" in line 8. *1/20*

The recommendations suggested with respect to stock subscriptions found on pages 243 to 245 of the Folk report were disapproved. *1/20*

It was moved and seconded that the suggestion with respect to broadening the definition of "wasting asset corporations" be approved (Folk report page 246). *1/20*

The suggestion of a statute respecting stock dividends (Folk report page 247) was not approved. *1/20*

The suggestion respecting Directors liability for unlawful dividends (Folk report pages 247 and 248) was disapproved.

Margaret A. Storey
Secretary

MINUTES OF NINETEENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The nineteenth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl Potter & Anderson, Delaware Trust Building, Wilmington, Delaware, on June 22, 1965, at 10:30 o'clock A.M.

The meeting was called to order by Honorable Clarence A. Southerland, Chairman of the Committee. Others present were:

Henry M. Canby, Esq.
Richard F. Corroon, Esq.
Hon. Elisha C. Dukes
Mr. Alfred Jervis
Charles F. Richards, Jr., Esq.

The Committee considered the recommendation of Professor Folk, concurred in by Mr. Killoran, contained in the second sentence of the first paragraph of page 1 of the Killoran report dealing with by-laws. The recommendation was disapproved.

The Committee considered the suggestions embodied in the second paragraph on page 1 of the Killoran report on

by-laws and approved them, subject to change in the following form:

"Make by-laws, which ^{may} contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees."

§122(c)

As to the recommendation that the \$20 penalty provision be transferred to another part of the statute, it was disapproved, the Committee being of opinion that the provision serves no useful purpose.

The Committee considered the suggestion embodied in the last sentence of the Killoran report on by-laws, referring to paragraph 3 on page 32 of the Folk report, and disapproved it as unnecessary.

It was agreed that the suggestion on pages 32 and 33 of the Folk report with respect to close corporations should be held in abeyance, awaiting the draft of the act respecting close corporations now being prepared by Professor Folk.

The Committee considered that portion of the Folk report, pages 224-227, dealing with definitions, and Mr. Killoran's report, pages 1-2, dealing with the same subject. It was decided to postpone consideration of this portion of the report.

Done

The Committee considered the Folk report, pages 228-230, respecting issuance of stock and the Killoran report, pages 2-4, upon the same subject. It was the conclusion of the Committee that none of the possible amendments suggested for consideration by Professor Folk was desirable.

*NO
Change
5/15/11*

The Committee considered the subject of consideration for issued shares contained in the Folk report, pages 231-232, Sections 152-154.

1. The suggestion of specific authorization for the payment of organization expenses and commissions was deemed unnecessary.

*Done
No change
152*

2. The Committee considered the discussion of Sections 153 and 154, Folk Report, pages 231-235, and Killoran report, pages 4-7, relating to consideration for shares. It was decided to defer further consideration thereof until Mr. Killoran was present.

*Done
NO change
see 153-154*

The Committee considered the discussion of partly paid shares, paragraph 3 on page 236 of the Folk report, page 7 of the Killoran report, and was of the opinion that no additional provision with respect to endorsements upon the certificate was desirable. The Committee was also of the opinion a sentence should be added to Section 156, declaring that no voting rights should exist in respect of partly paid shares.

*Reviewed at
2/11/1914*

Mr. Jervis, of The Corporation Trust Company, reported that he was not yet ready to make a recommendation in respect of retention or non-retention of the duplicate stock ledger.

The meeting adjourned to meet Wednesday, July 14.

MINUTES OF TWENTIETH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The twentieth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on July 14th, 1965, at 10:30 o'clock A. M.

The meeting was called to order by Honorable Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esq.
Hon. Elisha C. Dukes
Clair J. Killoran, Esq.
Walter Stapleton, Esq.
Margaret S. Storey

The Committee considered and approved the suggestion in the Folk report pages 224-227 relating to definitions, recommended in the first paragraph of the Killoran report. It was agreed that this suggestion should be approved with the understanding that the Committee's assistants, Messrs. Stapleton, Grompton and Richards, should be required to review the entire corporation law very carefully with a view of inserting these definitions in every section of the statute which requires any such new definitions.

The Committee considered again the possibility of eliminating the distinction in Section 153 between corporations incorporated prior to April 1, 1929 and those incorporated thereafter in reference to the power to issue no par stock. It was agreed that the statute should stay as it is in this respect.

The Committee considered the suggested amendments to Sections 153 and 154 found on pages 232 and 233 of the Folk report paragraphs (a) to (f), and were of the opinion, with Mr. Arsht dissenting, that no changes should be made in Sections 153 and 154. It was understood that this discussion should be continued at the next full meeting of the Committee. ✓

The Committee considered the last sentence of Section 153 respecting the directors' right to fix the consideration for ten per cent of the initial issue of authorized stock (see Killoran report page 6 and Folk report page 233 footnote). It was agreed that the provisions should not be changed. ✓

The Committee reconsidered the decision of the meeting of June 22, 1965 that no voting rights should exist in respect to partly paid shares and were of the opinion that the law should remain as is, that is, that the holder of said share might vote under Section 212 of the statute. done 3/56

On the subject of partly paid shares, the Committee, at the suggestion of Mr. Arsht, considered sections 156, 161 and 163 in respect of the liability for payment of the consideration for the shares. See also Folk report page 242. It was understood that Mr. Killoran would make a redraft of these three sections and send a copy to each of the members of the Committee and this subject would be considered at the next meeting.

Mr. Arsht raised the question of the meaning of the word "consideration" in the last sentence of Section 156 dealing with dividends upon partly paid shares. It was agreed that this question should also be considered in connection with the redraft of this section and Sections 161 and 163 to be made by Mr. Killoran. pen

The meeting adjourned. The next meeting to be held
July 27th, 1965.

Margaret A. Storey

MINUTES OF TWENTY-FIRST MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The Twenty-First meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Delaware Trust Building, Wilmington, Delaware, on July 27, 1965, at 10:30 A.M.

The meeting was called to order by Honorable Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esquire
Henry M. Canby, Esquire
Clair J. Killoran, Esquire
Charles F. Richards, Jr., Esquire

The Committee considered and approved the draft of 8 Del. C., Section 161(a) and (c), as proposed by Mr. Killoran in his draft of July 27, 1965.

The Committee considered subparagraph (d) to 8 Del. C., Section 161 as suggested in the draft of Mr. Killoran of July 27, 1965, and approved it as suggested. Mr. Killoran's suggestion is identical with that of Professor Folk at page 243 of his report, subparagraph (c). In approving the Folk - Killoran suggestion,

the Committee recognized that it was reversing the action of the Committee at its June 8, 1965, meeting.

The Committee considered the present subparagraph (b) of Section 161 and decided that it should remain as it is. It further noted that the present subparagraphs (d) and (e) should be relettered as (e) and (f).

The Committee considered Section 156 of the Corporation Law. The Committee felt that (1) under the present Statute there was some doubt as to the amount that could be paid as a dividend on partly paid shares, and (2) that there was some doubt as to whether a dividend must be paid on partly paid shares when a dividend is paid on fully paid shares of the same class. The Committee, therefore, decided that the present third sentence of Section 156 should be stricken and inserted in lieu thereof should be:

"Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon."

The Committee considered and approved the two suggestions appearing at the top of the Folk Report at page 157 as

recommended in Mr. Canby's report of June 8, 1965, in paragraph 1. It thus adopted the proposed substitute for subsection (b) of Section 218, of the Corporation Law, appearing in the middle of page 157 of the Folk Report.

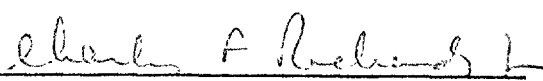
The Committee considered and disapproved the suggestion appearing at the top of page 158 of the Folk Report and recommended in paragraph 2 of Mr. Canby's report of June 8, 1965.

Mr. Canby agreed that he would draft a Section for the Delaware Corporation Code dealing with irrevocable proxies encompassing some of the suggestions found at Folk Report pages 160-163 and that he would consider at what point in the Delaware Corporation Law such a section should be inserted, bearing in mind that some change in Section 212 might be necessary.

The Committee considered the language suggested by Professor Folk at page 164 of his Report dealing with voting agreements and decided to adopt it as a further subsection of Section 218 of the Corporation Law with the added proviso that a ten year limitation period be added to Professor Folk's proposed language. It was suggested that Section 218 might be re-titled

Voting Trusts and Pooling Agreements, but no committee action was taken on this suggestion.

The meeting adjourned. The next meeting to be held September 14, 1965.



Charles F. Richards, Jr., Esquire
Acting Secretary

7/27/65

§161. Liability of stockholder for stock not paid in full

(a) When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of such shares shall be bound to pay on each share held by him the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued by the corporation.

(c) Anything in this chapter to the contrary notwithstanding, a holder of shares who has acquired such shares in good faith without knowledge that they were not paid in full or to the extent stated in the certificate for such shares shall not be liable either to the corporation or to its creditors for any amount beyond that shown by such certificate to be unpaid on the shares represented thereby, but the transferor shall remain liable therefor. Any holder who derives his title through such a holder and who is not himself a party to any fraud affecting the issuance of such shares shall have all the rights of such former holder.

(d) No person holding shares in any corporation as collateral security shall be personally liable as a shareholder but

the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a shareholder, but the estate and funds in the hands of such executor, administrator, guardian, trustee or other fiduciary shall be liable.

§163. Payment for stock; assessments

The capital stock of a corporation shall be paid in such amounts and at such times as the directors may require. The directors may, from time to time, assess upon each share of stock not fully paid up, such sum of money as the necessities of the business may, in the judgment of the board of directors, require, not exceeding in the whole the balance remaining unpaid on said stock, and such sum so assessed shall be paid to the treasurer at such times and by such installments or calls as the directors shall direct. The directors shall give at least 30 days' notice of the time and place of such payments in a newspaper of the county in this State where such corporation is established, or has its principal place of business, or by written notice mailed at least 30 days before the time for such payment, to each stockholder at his last known postoffice address.

MINUTES OF TWENTY-SECOND MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The Twenty-Second meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Delaware Trust Building, Wilmington, Delaware, on September 14, 1965, at 10:30 A. M.

The meeting was called to order by Honorable Clarence A. Southerland, Chairman of the Committee. Others present were:

S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Charles S. Compton, Esq.
Hon. Elisha C. Dukes
Mr. David H. Jackman
Mr. Alfred Jervis
Irving Morris, Esq.
Margaret S. Storey

The Committee approved draft by Mr. Morris in respect to stockholders inspection - Section 220 - leaving for future discussion the question whether to continue to require the maintenance of duplicate stock ledgers in this State.

The Committee approved the revision of Sections 218 and 212 of the Corporation Law, dealing with Voting Trusts and irrevocable proxies - Mr. Canby's memo of August 12, 1965 - with the addition of the word "each" in the 5th line from the bottom of page 4, after the word "periods".

The Committee considered a suggestion from Mr. Richard F. Corroon respecting the construction of the effective date of the recent amendment to the Franchise Tax Law. It was unanimously decided that the decision should be left to an administrative ruling by the Secretary of State.

The Committee considered the September 14, 1965 report by Mr. Arsht with respect to Prof. Folk's report pages 208-211, regarding sale of assets, dissolution and winding up - Sections 271-273 of the law.

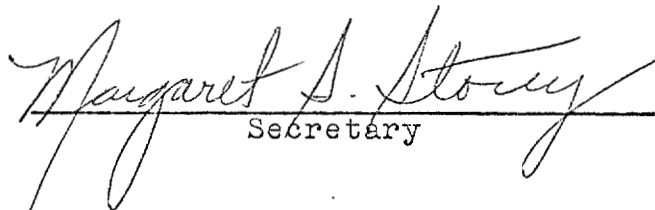
The Committee took the following action:

- I. Approved the inclusion of an exemption for mortgages and pledges. Disapproved the recommendation with respect to sale of all assets in the course of business.
- II. Disapproved as unnecessary.
- III. Approved - The notice to be 20 days.
- IV. Approved.
- V. No change.
- VI. Approved.

Sections 272 and 273 no change.

Mr. Arsht was requested to make a redraft of Section 271 reflecting the Committee's decision.

The meeting adjourned. The next meeting to be held September 28, 1965.


Secretary

MEMORANDUM

TO: DELAWARE CORPORATION LAW REVISION COMMITTEE
FROM: S. SAMUEL ARSHT
RE: SECTION 271 -- SALE OF ASSETS

The following is a redraft of Section 271 of the Corporation Law to reflect the Committee's decisions of September 14, 1965. Words in the present statute which have been deleted are in brackets; words which have been added are underlined.

§ 271. Sale, lease or exchange of assets; consideration; procedure

(a) Every corporation [organized under the provisions of this chapter,] may at any meeting of its board of directors sell, lease, or exchange all or substantially all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may [be] consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors deems expedient and for the best interests of the corporation, when and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose or at

the next annual meeting of the stockholders, provided that the notice of the said annual meeting contains a notice of the proposed sale, lease or exchange, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding. Such special or annual meeting shall be called and held upon such notice as the certificate of incorporation or by-laws of the corporation shall provide, or, in the absence of such provision, upon notice thereof to each stockholder so entitled to vote, either delivered to such stockholder or mailed to him at his post office address, if known, at least twenty days before the date fixed for the meeting. The certificate of incorporation may require the vote or written consent of the holders of a larger proportion of the stock issued and outstanding.

(b) The authorization or consent of stockholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

(c) Notwithstanding stockholder authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets, the board of directors may abandon such proposed sale, lease or exchange without further action by the stockholders, subject to the rights, if any, of third parties under any contract relating thereto.

MINUTES OF TWENTY-THIRD MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The Twenty-Third meeting of the Delaware Corporation Law Study Committee was held at the offices of Bert, Potter & Anderson, Delaware Trust Building, Wilmington, Delaware, on October 12, 1955, at 10:30 A.M.

The meeting was called to order by Honorable Clarence A. Southerland, Chairman of the Committee. Others present were:

Henry H. Conby, Esq.
Richard F. Corroon, Esq.
Honorable Elisha C. Dukes
Mr. David H. Jackman
Mr. Alfred Jervis
Clair J. Killoran, Esq.
Waizer K. Stapleton, Esq.

In the absence of the Committee's secretary, the Chairman asked the undersigned to serve as acting Secretary.

The Committee then commenced its deliberations of Professor Fork's draft of a sub-chapter on close corporations (supplementary report on close corporations, p. 42, et seq.).

The Committee approved sub-section (a) of Section 201 as it appears on page 42 with the deletion of the paren-

* All page references herein refer to this supplementary material.

thetical phrase, "(Definition of 'Close Corporation')" in lines 2 and 3. It was decided that similar parenthetical phrases in the remainder of the draft would be deleted.

) Done

The Committee approved the substance of sub-section (b) of Section X-1 as it appears on page 42, but amended the language thereof to read as follows:

) Done

"All provisions of the general corporation law shall be applicable to all corporations organized under this sub-chapter except insofar as this sub-chapter otherwise provides."

The suggestion made in the third paragraph of the reporter's note to Section X-1 on page 42 was disapproved.

) Done

Section X-2 as it appears on pages 43-44 was approved with the following amendments to sub-section (a) thereof:

1. The language of the lead sentence of this sub-section should be amended to make it clear that the certificate of incorporation of a close corporation need not contain all of the provisions which would be permissible under Section 102 (b).

) omitted Permitta

2. Cause (1) should be amended to read "Thirty or fewer persons" instead of "twenty or fewer persons."

) Done

3. Cause (2) should be amended to read as follows:

"(2) All of the outstanding shares of all classes shall be subject to one or more of the restrictions on transfer permitted by section X-9; and"

Done
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The Committee approved Section X-3 (p. 46) as amended to read:

"Section X-3. Filing of Certificate of Incorporation of Close Corporation.

"A close corporation shall be formed in accordance with the provisions of Sections 101 through 108 of this title, except that:

"(a) The certificate of incorporation shall be prefaced by a title showing the name of the corporation and conspicuously setting forth the words 'CLOSE CORPORATION', and

Done

"(b) The certificate of incorporation shall set forth the provisions required by Section X-2."

The Committee approved Section X-4 (pp. 46-47) as amended to read:

"Section X-4. Election of Existing Corporation to Qualify as Close Corporation.

"Any corporation organized under the laws of this State may qualify as a close corporation under this sub-chapter by executing, acknowledging and filing with the Secretary of State an amendment to its certificate of incorporation stating that

Done

it elects to qualify as a close corporation, setting forth the provisions required by Section X-2 to appear in the certificate of incorporation of a close corporation, and conspicuously setting forth the words 'CLOSE CORPORATION' in the title of the certificate of amendment. Such amendment shall be adopted in accordance with the requirements of Section 242 of this title, except that any such amendment must be approved by a vote of the holders of record of at least two-thirds of the shares entitled to vote at an election of directors of the corporation."

Done

The Committee tentatively approved Section X-5 (pp. 47-48) as written, with the parenthetical clauses thereof deleted. During the Committee's consideration of this section, a question was raised regarding its effect in a situation where a majority of stockholders wish the corporation to remain a close corporation but the Board of Directors purports to take corporate action contrary to the corporation's status as a close corporation. It was understood that this matter would be given further consideration at a subsequent meeting.

OPEN

The Committee approved Section X-6 (pp. 49-50) with the following amendments:

1. The parenthetical clause in lines 4 and 5 should be deleted.

Done

2. The second sentence thereof should be amended to read, "Any such amendment shall be adopted and become effective in accordance with Section 242 of this title except as otherwise provided in this section."

} Done

3. The words "and also by a vote of the holders of record of at least two-thirds of all", together with the comma preceding these words, should be deleted from lines 16 and 17 thereof.

} Done

4. The last sentence should be deleted.

} Done

With respect to Section X-7 (pp. 50-52), it was agreed that the title should be changed to read "Issuance or Transfer of Shares of a Close Corporation; Notice", and that this section should include a provision, corresponding to Section 151(f) and Section 194, requiring that reference be made on each stock certificate to any applicable restrictions on transfer and any qualifications imposed under subsection (b) of Section X-1. It was the consensus of the Committee that the latter amendment would require redrafting of Section X-7 and that such redrafting should be undertaken by Mr. Connor, with copies of the redraft to be sent to all Committee members.

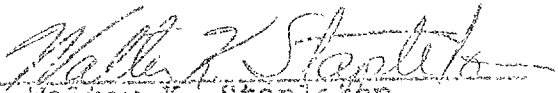
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The meeting was then adjourned. The next meeting

will be held on October 26, 1965.

Respectfully submitted,


Walter K. Stapleton
Acting Secretary

SECRETARY'S MEMORANDUM
TO FELLOW DRAFTERS

The amended version of Section X-1 (b) was adopted as being a simpler statement of the thoughts contained in the draft of this section. Upon further reflection, I am not sure that it says precisely the same thing. If the new language is to be retained, I would substitute the phrase "all close corporations as defined in Section X-2" in lieu of the language "all corporations organized under this subchapter" to make it clear that this applies as well to corporations organized under the general corporation law and subsequently becoming a close corporation under Section X-4 as well as to all corporations organized under this subchapter.

MINUTES OF TWENTY-FOURTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The twenty-fourth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on October 26th, 1965, at 10:30 o'clock A. M.

In the absence of the Chairman, the meeting was called to order by Richard F. Corroon, Esq., Vice-Chairman of the committee. Other present were:

S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Charles Crompton, Esq.
Hon. Elisha C. Dukes
Mr. Alfred Jervis
Irving Morris, Esq.
Margaret S. Storey

Mr. Jervis reported that The Corporation Trust Company was willing to abide by the decision of the committee with respect to the statute requiring duplicate stock records be maintained in Delaware, but that his company approves of dispensing with such statute.

Mr. Morris stated that initially he had the impression that the statute was not observed by the overwhelming majority of Delaware corporations, but that at a meeting of this committee he had learned otherwise so that now he is opposed to eliminating the statute.

It was voted five to two to dispense with the statute requiring the maintenance of duplicate stock records in Delaware.

Mr. Jervis suggested the bill containing amendment to this statute be coupled with the amendment to Section 275 proposed by Mr. Potter. Mr. Corroon disagreed and stated the Corporation

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Committee of the Delaware Bar Association was against partial enactment of changes in the corporation law made by this law study committee.

The Committee then discussed pages 53 - 54 and 55 of the Folk draft on Close Corporations, and approved re-writing said pages to read as follows:

Section X-8 Involuntary Termination of
Close Corporation Status.

(a) If any event occurs as a result of which one or more of the conditions included in its Certificate of Incorporation pursuant to Section X-2 has been violated, the corporation's status as a close corporation shall terminate unless

(1) within thirty days of the occurrence of the event, or within thirty days after the event has been discovered, whichever is later, the corporation files with the Secretary of State a Certificate executed by - etc. - setting forth the fact that one of the conditions included in its Certificate of Incorporation pursuant to Section X-2 has ceased to be applicable and furnishes a copy of such certificate to each stockholder, and

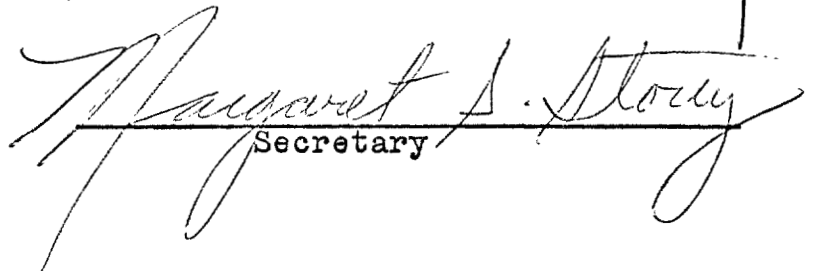
(2) the corporation concurrently takes such steps as are necessary to correct the situation which threatens its status as a close corporation, including, without limitation, refusal to register transfer of shares which have been wrongfully transferred as provided by Section X-7, or a proceeding under subsection (b) of this section.

(b) The Court of Chancery upon the suit of the corporation or any stockholder shall have jurisdiction to issue all orders necessary to prevent the corporation from losing its status as a close corporation, or to restore its status as a close corporation by enjoining or setting aside any act or threatened act on the part of the corporation or a shareholder which would be inconsistent with any of the conditions required by Section X-2 unless it is an act approved in accordance with Section X-6. The Court of Chancery may enjoin or set aside any transfer or threatened transfer of securities contrary to the terms of the certificate of incorporation or of any transfer restriction permitted by Section X-9, and may enjoin any public offering or threatened public offering of securities of the corporation.

(c) If the corporation fails or refuses to take timely action as required by subsection (a) the Attorney General may apply to the Court of Chancery for an order appointing a receiver, with the powers conferred on receivers by Section 291 of this title, for the purpose of dissolving the corporation and liquidating its business and affairs; but such proceeding shall be dismissed if the corporation complies with the requirements of subsection (a) and also pays the costs of the dissolution proceeding.

The meeting then adjourned, the next meeting to be held
November 9th, 1965.

done


Secretary

MINUTES OF TWENTY-FIFTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The Twenty-Fifth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on November 22, 1965, at 10:30 a.m.

The meeting was called to order by the Chairman, The Honorable Clarence A. Southerland. Others present were:

S. Samuel Arsht, Esq.
Richard F. Corroon, Esq.
Henry M. Canby, Esq.
Mr. Alfred Jarvis
Charles F. Richards, Jr., Esq.

In the absense of the Secretary, the Chairman requested that Charles F. Richards, Jr., Esq., act as Secretary.

Professor Folk's proposed statute X-9 was adopted in slightly modified form as shown in Exhibit A of these minutes. It was the committee's decision that X-9 should be placed in the General Corporation Law with a reference in the closed corporation subchapter making the section applicable to closed corporations.

Professor Folk's draft of Section X-10 was adopted with certain slight modifications as shown in Exhibit B attached to these minutes. It was the Committee's decision that X-10 should be placed in the General Corporation Law with a reference in the closed corporation subchapter making the section applicable to closed corporations.

Professor Folk's suggested Section X-11 was adopted by the Committee in a slightly modified form and with a new title as shown in Exhibit C attached to these minutes. Done

A preliminary discussion was held on William Potter's, Esq. suggested amendment to Section 275 of the Delaware Corporation Law. The Chairman directed Mr. Corroon to circulate a suggested amendment among the members of the Commission and to request their comments. It was thought, by some of the members of the Commission that the proposed amendment to Section 275 was too narrowly drawn in that it restricted the procedure to a special situation. It was thought, by some members of the Commission that the final power to dissolve a corporation should be vested in the Chancellor rather than in one of the parties to a joint venture. No action was taken on the proposed amendment. ? open

The meeting then adjourned, the next meeting to be at the call of the Chairman.



Charles F. Richards, Jr.
Acting Secretary

EXHIBIT A

Section X-9 Restrictions on Transfer of Securities

(a) A written restriction on the transfer or registration of transfer of a security of a corporation, if permitted by this section and noted conspicuously on the security, may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the security, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(b) A restriction on the transfer or registration of transfer of securities of a corporation may be imposed either by the certificate of incorporation or by the by-laws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

(c) A restriction of the transfer of securities of a corporation is permitted by this section if it:

(1) Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities or;

(2) Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities or;

(3) Requires the directors or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities or;

(4) Prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable.

(d) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under Subchapter S of the United States Internal Revenue Code is conclusively presumed for a reasonable purpose.

(e) Any other lawful restriction on transfer or registration of transfer of securities is permitted by this section.

(f) If a restriction on transfer of a security is held not to be permitted by this section, the corporation shall nevertheless have an option, for a period of thirty days after the judgment setting aside the restriction becomes final, to acquire the restricted securities or any of them at a price which is agreed upon by the parties subject to the approval of the Court of Chancery, or if no agreement is reached as to price then at the fair value as determined by the Court of Chancery. In order to determine fair value, the Court may appoint one or more persons as appraisers to receive evidence and recommend a decision in the question of fair value. The appraisers shall have such power as appraisers

under Subsection (b) of Section X-15 (Jurisdiction of Court of Chancery to Require Purchase of Shares).

(g) The Court of Chancery shall have jurisdiction to enforce any restriction on transfer or registration of transfer of any securities permitted by this section, and also to set aside any restriction in cases of fraud, breach of duty or oppression.

EXHIBIT B

Section X-10 Agreements Restricting Discretion of Directors

A written agreement among the stockholders holding a majority of the outstanding shares entitled to vote whether solely among themselves or between one or more of them and a party not a stockholder, is not invalid, as between the parties to the agreement, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors. The effect of any such agreement shall be to relieve the directors and impose upon the stockholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such provision.

EXHIBIT C

Section X-11 Management by Stockholders

The certificate of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect,

(1) No meeting of stockholders need be called to elect directors;

(2) Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for purposes of applying provisions of this title; and

(3) The stockholders of the corporation shall be subject to all liabilities of directors.

Such a provision may be inserted in the certificate of incorporation if all incorporators and subscribers or all holders of record of all outstanding shares, whether or not having voting power, authorize such a provision. An amendment to the certificate of incorporation to strike out such a provision shall be authorized if approved by a vote of the holders of a majority of all outstanding shares of the corporation, whether or not otherwise entitled to vote. If the certificate of incorporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

MINUTES OF TWENTY-SIXTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The Twenty-Sixth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esqs., Delaware Trust Building, Wilmington, Delaware, on December 7th, 1965, at 10:30 A. M.

The meeting was called to order by the Chairman, the Honorable Clarence A. Southerland. Others present were:

Richard F. Corroon, Esq.
Mr. Alfred Jervis
J. Clair Killoran, Esq.
Walter K. Stapleton, Esq.
Margaret S. Storey

It was the concensus that the latest redraft of Section 275 prepared by Mr. Potter and his associate, with respect to joint ventures with two stockholders, be approved by the Committee as a part of their revision of the Corporation Law.

The committee then resumed consideration of the proposed statutes on Close Corporations by Prof. Folk.

It was moved and seconded that X-12 be approved with deletion of paragraph (4) and further consideration of paragraph (5).

It was moved and seconded that X-13 be disapproved.

It was moved and seconded that X-14 be disapproved, including X-14.1.

It was the concensus that consideration of X-15 should be deferred in order to check its provisions with those provisions heretofore consodered, for example X-10 and X-11, to determine whether X-15 is necessary and if so to what extent.

draft 1/29/66
done
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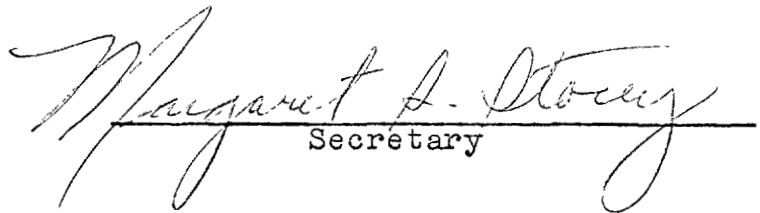
X-16 was approved with the exception that Mr. Corroon will draft a section setting forth the procedure in filing a dissolution under this section and paragraph (c) was changed to read as follows:

(c) Each certificate of shares in any corporation whose certificate of incorporation authorizes dissolution as permitted by this section shall conspicuously note on its face the existence of the provision. Unless noted conspicuously on the face of its certificate, the provision is ineffective.

The Committee decided to refer the adoption of X-17 to the compilers of the Revised Corporation Law.

The next meeting of the Committee will be held January 11, 1966.

The meeting then adjourned.


Secretary

M. Gremson

November 29, 1965

MEMORANDUM TO MEMBERS OF THE DELAWARE CORPORATION
LAW REVISION COMMITTEE

Since sending you Bill Potter's proposed amendment to Section 275, he has again revised his draft to substitute the word "may" for "shall" in that portion of the draft having to do with the dissolution of the joint venture. A copy of the latest draft is enclosed.

RFC

Richard F. Corroon,
Vice Chairman

RFC:mp
Enc.

Dublin-Keene, Inc.

Reorganization Problem

Suggested Amendment to Section 275 of
Delaware Corporation Law

If the stockholders of a corporation of this State, having only two (2) stockholders each of which own 50% of the stock therein, shall be engaged in the prosecution of a joint venture and if such stockholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either stockholder may file with the Court of Chancery a petition stating that it desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both stockholders or that, if no such plan shall be agreed upon, the corporation be dissolved. Such petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other stockholder and to the directors and officers of such corporation. The petition and certificate shall be acknowledged before an officer authorized by the laws of this State to take acknowledgments of deeds.

Unless both stockholders file with the Court of Chancery (i) within three months of the date of the filing of such petition, a certificate similarly acknowledged stating that they have agreed on such plan, or a modification thereof, and (ii) within one year from the date of the filing of such petition, a certificate similarly acknowledged stating that the distribution provided by such plan has been completed, the Court of Chancery may dissolve such corporation and may, by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed under section 279 of this title, administer and wind up its affairs. Either or both of the above periods may be extended by agreement of the stockholders, evidenced by a certificate similarly acknowledged and filed with the Court of Chancery prior to the expiration of such period.

MINUTES OF TWENTY-SEVENTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The twenty-seventh meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl Potter & Anderson, Delaware Trust Building on February 8, 1966. The meeting was called to order by the Chairman, The Hon. Clarence A.

Southerland. Others present were:

C. J. Killoran, Esq.
Mr. Alfred Jervis
S. Samuel Arsht, Esq.
Hon. Elisha C. Dukes
Charles S. Crompton, Jr., Esq.

In the absence of the Secretary, the Chairman requested the undersigned to act as Secretary for the meeting.

The Chairman distributed the reports by Henry Canby on the merger provisions of the code, of S. Samuel Arsht on dissolution, and Messrs. Jackman and Jervis on Sections 106 through 108 of the code.

The Committee then considered the report of S. Samuel Arsht (undated) on the provisions of the code regarding dissolution, insolvency, and renewal of charter. The following action was taken by the Committee on Mr. Arsht's report:

1. The recommendation of Professor Folk approved by Mr. Arsht's report to revise Section 274 of the code was unanimously approved by the Committee, and the draft of an amended Section 274 presented in Mr. Arsht's report on page 2 was approved by the Committee with the following changes:

a. In the eighth from last line of the Arsht draft, strike the words "on subscriptions".

b. In the fifth from last line of the Arsht draft, strike the ";" after the word "thereto" and add the words, "and all issued stock certificates, if any, have been surrendered and cancelled;".

2. a. The recommendation of Professor Folk approved by Mr. Arsht that Section 275 be amended to remove the requirement of mandatory election judges in the case of dissolution and in the section regarding Charter Amendments (Section 242) was unanimously approved by the Committee. The Chairman requested that Mr. Arsht submit an appropriate redraft of Sections 275 and 242 reflecting such changes.

b. The recommendation of Professor Folk approved by Mr. Arsht to repeal the provisions of Section 275 requiring the publication of a certificate of dissolution by the Secretary of State was unanimously approved by the

Done

Open

Done

Committee. The present Section 275(c) will be amended, therefore, by striking out the last clause of the next to last sentence thereof and all of the last sentence except the last clause of the last sentence reading, "and thereupon the corporation shall be dissolved." The present Section 275(d) will be amended also by the deletion of the final clause in the first sentence.

Done

c. The Committee decided to defer action on the provisions as to execution, acknowledgement, filing, and recordation contained in Section 275(c) until a decision is reached on the question of the adoption of an omnibus section for execution, etc. The Chairman requested the legal secretaries to prepare a draft of such an omnibus section for the Committee's consideration.

Reconsidered ?

d. It was unanimously agreed by the Committee that no change should be made in the provisions of Section 275(c) with respect to class voting upon dissolution.

Done

The Committee discussed the recommendation of Mr. Arsht in the second paragraph of his Section 2(d) that the stockholders' vote on dissolution be reduced from two-thirds to a majority. After some discussion, it was decided by majority vote of the Committee to make no change in the provisions of Section 275 regard-

Done

ing the stockholder vote required for dissolution.)

3. The Committee unanimously approved the redraft of Section 276 as prepared by Mr. Arsht and set out on pages 5 and 6 of his report.) Done

4. The Committee concurred in the recommendation of Mr. Arsht that no change be made in Section 277 of the code.) Done

5. The recommendation of Professor Folk approved by Mr. Arsht to add a new phrase to Section 278 permitting the Court of Chancery to extend the three year statutory period in which corporations may be continued for purposes of dissolution was disapproved by the Committee.) Done

The Committee also disapproved the Folk suggestion that the statutory three year period be changed to "a reasonable period".) Done

The Committee also disapproved the Folk recommendation that an addition be made to Section 278 regarding the escheat of unclaimed assets in dissolution, since the Committee was of the opinion that the provisions of 12 Del. Code § 1160 as amended by 50 Del. Laws, Ch. 507 are adequate for this purpose.) Done

6. The Committee approved the Arsht recommendation that no changes be made in present Sections 279 through 282.) Done

7. The Committee unanimously approved the amendatory language to Section 283(b) as presented in the Arsht report, page 7.) Done

The Committee disapproved the Folk suggestion that specific language might be added to Section 283 enumerating the types of "abuse" which may result in charter forfeiture.

) Done

Mr. Jervis called to the Committee's attention the fact that the changes approved earlier in the meeting in Section 275 would require the amendment of Section 361, paragraph 5 eliminating the payment of fees to the Secretary of State for the cost of publishing a certificate of dissolution.

) open

The Committee then considered the recommendation of the Arsht report covering subchapter 11 of the code dealing with insolvency, receivers, and trustees.

1. The Committee disapproved the change recommended by Professor Folk and approved by Mr. Arsht on page 8 of his report regarding the notices to be given upon the appointment of a receiver, so no change in Section 293 will be required.

) Done

2. It was decided by a majority of the Committee to disapprove the recommendation of Professor Folk approved by Mr. Arsht to add a new section to the code following Section 296 regarding the termination of a receivership by the Court of Chancery.

) Done

The Chairman announced that the next meeting of the Committee would be held on February 15, 1966 at 10:30 a.m. at which time the Committee will consider the reports of Mr. Canby

on mergers and Messrs. Jervis and Jackman on Sections 106
through 108. The meeting was then adjourned.

A handwritten signature in cursive script, appearing to read "Charles S. Crompton, Jr.", written over a horizontal line.

Charles S. Crompton, Jr.
Acting Secretary

RICHARDS, LAYTON & FINGER
4072 duPont Building
Wilmington, Delaware 19801

RE: Minutes of Twenty-Eighth Meeting of Delaware
Corporation Law Study Committee

DATE: 2/17/66

TO: All Committee Members

FROM: Charles F. Richards, Jr., Legal Secretary

It has been called to my attention that there is an error appearing in Paragraph 13 of the Minutes in that the Minutes should read that a redraft of subsection (b) of Section 259 rather than 251 was approved. An error also appears in the Folk Report at Page 195 as noted in Mr. Canby's critique of that Report. When Folk speaks of Section 251 on that page, he is referring to Section 259.

CFRjr:lm

MINUTES OF TWENTY-EIGHTH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The Twenty-Eighth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esquires, Delaware Trust Building, Wilmington, Delaware, on February 15, 1966, at 10:30 a.m.

The meeting was called to order by the Chairman, The Honorable Clarence A. Southerland. Others present were:

S. Samuel Arsht, Esquire
Henry M. Canby, Esquire
Richard F. Corroon, Esquire
Honorable Elisha C. Dukes
Mr. David H. Jackman
Mr. Alfred Jarvis
Charles F. Richards, Jr., Esquire

In the absence of the Secretary, the Chairman requested that Charles F. Richards, Jr., Esquire, act as Secretary.

1. The Committee considered Chancellor Seitz' letter of February 8, 1966, to the Chairman and the Chairman's reply of February 9, 1966. The Committee approved the suggested amendment to 8 Del. C. § 224 drafted by the Chairman. The Committee, thus, approved the changing of the period at the end of the first sentence of § 224 to a comma and the addition of the following language.

"and shall give at least twenty days' notice of the meeting at which such election is to be held."

2. On reconsideration, the Committee approved the new amendment to the insolvency provisions of the corporation law as set forth on Pages 8 and 9 of Mr. Arsht's report with the additional amendment of inserting the words "an insolvent" in lieu of the word "a" in Line 1. The Committee suggested that this new section should be Section 301. See Exhibit 1 attached hereto.

Done

3. The Committee approved the amendment to Section 312 suggested by Folk and recommended by Arsht at Page 9 of his report. The new Section 312 (a) is set forth as Exhibit 2 to these Minutes.

Done

4. The Committee approved the suggestion made by Mr. Arsht at Page 10 of his report that Section 242 (a) be amended to expressly authorize a corporation to amend its certificate to change the period of duration of that certificate. The Committee, thus, felt that Section 242 (a) should be amended as shown in Exhibit 3.

Done

5. The Committee disapproved Folk's suggested amendment to subsection (e) of Section 312 relating to personal liability of directors and officers after expiration of the corporate charter.

Done

6. The Committee approved the redraft of subsection (h) to Section 312 as suggested by Mr. Arsht at Page 11 of his report with certain modifications as shown in the attached Exhibit 4.

Done

7. The Committee approved as a matter of policy the elimination of a statutory right of appraisal for members of a class of stock which on the record date was either (1) registered on a National Securities Exchange or (2) had outstanding 2,000 or more shareholders; unless the corporate charter provides

Done

otherwise. Mr. Canby undertook to redraft the merger provisions in keeping with this policy decision.

W. Canby

8. The Committee disapproved two Folk suggestions appearing on Page 182 of his report. One, they disapproved the elimination of the two-thirds vote on mergers for corporations subject to the jurisdiction of the SEC. Second, they disapproved the suggestion that there be a class vote where it would be necessary if the proposal took the form of a separate amendment to the certificate of incorporation rather than of a merger.

None

9. The Committee approved the addition of a new subsection (d) to Section 251 suggested by Folk at Page 190. The Committee adopted the language of Professor Folk with the substitution of the word "agreement" for the word "plan" where that word appears in his draft as shown in the attached Exhibit 5.

Don

10. The Committee approved of the suggestion that the word "consolidation" be dropped from the Delaware Corporation Code and that its meaning be incorporated into the term "merger". Mr. Canby undertook to do this as a part of his redraft of the merger sections.

*Qu.
None
in
25-62*

11. The Committee directed Mr. Canby to adopt a one-way street approach to mergers between Delaware corporations and corporations not formed under the law of one of the several states of the United States. Such foreign corporations will be allowed to merge into a Delaware corporation, but a Delaware corporation will not be allowed to merge out of existence into a foreign corporation.

Open?

12. The Committee approved the suggestion appearing at the top of Page 194 of the Folk Report that the language attached as Exhibit 6 be added to Section 257. *JDR*

13. The Committee approved the redraft of subsection (b) of Section 259 as set forth by Professor Folk at Page 195. *259 JDR*

The meeting then adjourned. The next meeting was set by the Chairman for Tuesday, February 22, 1966, at 10:30 a.m.

Charles F. Richards, Jr.
Charles F. Richards, Jr.
Acting Secretary

EXHIBIT 1

§ 301. The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Court of Chancery in its discretion, and subject to such conditions as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.

EXHIBIT 2

§ 312. Renewal, revival, extension and restoration of charter

(a) Any domestic corporation whose period of duration is other than perpetual and which has not amended its certificate of incorporation to make its duration perpetual may, at any time before or after the expiration of its period of duration and any corporation existing under the laws of this State whose charter has become inoperative by law for non-payment of taxes and any corporation existing under the laws of this State whose charter has expired by reason of failure to renew the same or whose charter has been renewed, but, through failure to comply strictly with the provisions of this chapter, the validity of whose renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its charter, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original charter and all amendments thereto.

EXHIBIT 3

§ 242. Amendment of certificate of incorporation after payment of capital or where corporation has no capital stock

(a) Any corporation of this State existing prior to the tenth day of March, 1899, whether created by special act or general law, or any corporation created under the provisions of this chapter, may, from time to time, when and as desired, amend its certificate of incorporation by --

(1) Addition to its corporate powers and purposes, or diminution thereof, or both; or

(2) Substitution of other powers and purposes, in whole or in part, for those prescribed by its certificate of incorporation; or

(3) Increasing or decreasing its authorized capital stock or reclassifying the same, by changing the number, par value, designations, preferences, or relative, participating optional or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or

- (4) Changing its corporate title; or
- (5) Changing the period of duration; or
- (6) Making any other change or alteration in its

certificate of incorporation that may be desired.

Any or all such changes or alterations may be effected by one certificate of amendment.

Every certificate of incorporation as so amended, changed or altered shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment.

EXHIBIT 4

§ 312. Renewal, revival, extension and restoration of charter

(h) If only one or none of the last acting officers of any corporation desiring to renew or revise its charter is available by reason of death, unknown address or refusal or failure to act at the time of its renewal, the directors of the corporation, or those remaining on the board, although less than a quorum, may elect a successor to the officer or officers who are dead, or whose addresses are unknown, or who refuse or fail to act. If there shall be no director of the corporation available for the purposes aforesaid, by reason of death, unknown address, or refusal or failure to act, the stockholders of the corporation may elect as many directors as may be necessary, or they may elect a full board of directors, as provided by the by-laws of the corporation, and the board may elect successors to the officers who are deceased or whose addresses are unknown, or who refuse or fail to act. (Remainder of subsection is unchanged.)

EXHIBIT 5

§ 251. Consolidation or merger of domestic corporations

(d) Any agreement of merger or consolidation may contain a provision that at any time prior to filing the agreement of merger or consolidation with the office of the Secretary of State, the agreement may be abandoned by the board of directors of any participating corporation notwithstanding approval of the agreement of merger or consolidation by the shareholders of the participating corporations.

EXHIBIT 6

§ 257. Consolidation or merger of domestic stock and non-stock corporations

(c)... Nothing in this section shall be deemed to authorize the merger of a charitable non-stock corporation into a stock corporation, whereby the charitable status of such non-stock corporation would be lost or impaired; but a stock corporation may be merged into a charitable non-stock corporation which shall continue as the surviving corporation.

February 23, 1966

MEMO

TO: ALL MEMBERS

FROM: WALTER K. STAPLETON, LEGAL SECRETARY

RE: MINUTES OF THE TWENTY-NINTH MEETING OF THE
DELAWARE CORPORATION LAW STUDY COMMITTEE

I enclose herewith (1) the minutes of the committee meeting held February 22, 1966, and (2) a revised page 3 of the Davis-Jackman report of February 8, 1966, for each member who did not attend the meeting.

MINUTES OF THE TWENTY-NINTH MEETING
OF THE DELAWARE CORPORATION LAW
STUDY COMMITTEE

The Twenty-Ninth meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter & Anderson on February 22, 1966.

The meeting was called to order by the Chairman, the Honorable Clarence A. Southerland. Others present were:

Henry M. Canby, Esquire
Mr. Alfred Jervis
Walter K. Stapleton, Esquire

The Chairman noted the absence of a quorum, but suggested that the committee proceed to discuss Mr. Canby's redrafts of Sections 251, 252, 253, 254, 255, 256, 259, 260, 261 and 262.

*
Done

The committee tentatively approved the redrafts of the above-numbered sections, but did not attempt to pass on the proposal, set forth on pages 195A through 195C of the Folk Report, respecting the suggestion of Dewey Ballantine that the requirement of approval of a merger by stockholders of the surviving corporation be deleted in the special situation where it issues less than a prescribed number of shares to effectuate the merger. If approved, the statutory language suggested on pages 195B and 195C of the Folk Report would be

Done later

added to Sections 251 and 252 as new paragraphs or would be set forth in a new separate section.

The committee then proceeded to discuss the Jervis-Jackman Report of February 8, 1966.

The committee considered the first recommendation, dealing with pages 21 and 22 of the Folk Report, concerning the beginning of corporate existence and tentatively approved such recommendation in principle.

The committee was also of the opinion that the reference to a "license tax", currently contained in Section 106, should be deleted.

The committee tentatively approved the second point in the Jervis-Jackman Report recommending adherence to the present practice of not requiring directors to be named in the charter.

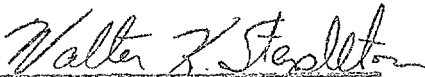
The third recommendation in the Jervis-Jackman Report concerning the revision of Sections 107 and 108, including the insertion of a new paragraph (d) in Section 107, was tentatively approved.

Since the committee had no reports currently on file which had not previously been considered by the committee, it

3.

was decided that a date would not be set for the next meeting of the committee until further reports were received.

Respectfully submitted,



Walter K. Stapleton
Acting Secretary

the present Delaware procedure employing incorporators be retained. It is significant that New York also has the same provision. N. Y. Bus. Corp. Law Section 404."

However, he proposes clarifying revisions of Sections 107 and 108.

Recommendation. We strongly and emphatically support and urge the Committee to approve Professor Folk's conclusion that the present Delaware procedure be retained. It is in the interests of service companies and lawyers using Delaware to do so.

The proposed revision of Section 107 is satisfactory and should be adopted. The proposed revision of Section 108 is also satisfactory except that (1) in paragraph (c) "to adopt by-laws" should be omitted, (2) in paragraph (a) the word "shareholders" should be changed to "stockholders" to conform with the language of the present law and in the fifth line "incorporation" should be changed to "corporation", and (3) paragraph (d) should be added to read as follows:

"(d) When there are two or more incorporators, if any dies or is for any reason unable or not available to act, the other or others may act. If there is no incorporator who can act, any person for whom the incorporator was acting as agent may act in his stead, or if such person also dies or is for any reason unable or not available to act, his legal representative may act."

Comment.

(1) Organization procedure. Often parties in interest for a variety of compelling reasons do not wish to be identified with a newly formed corporation. Naming of directors in the certificate of incorporation would require designating dummy directors. If temporary, accommodation directors are named the substitution of permanent directors is bothersome. Either stock subscriptions must be accepted to enable successors to be elected by stockholders or an awkward resignation of each director and election of his successor, one by one, is necessary.

Service companies and out-of-state lawyers find present long established and familiar procedures to be preferable. By-laws are generally adopted at the incorporators' meeting at which directors are elected, so that rules governing internal affairs are promptly in effect.

Moreover, there are definite advantages in placing management of a corporation in the hands of the incorporators until directors are elected. Amendments of the certificate of incorporation or surrender of corporation franchise (dissolution) before payment of capital are simplified and accomplished without delay, frequently by a mere telephone call to the service company.

MINUTES OF THE THIRTIETH MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The Thirtieth Meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl, Potter and Anderson, Esquires, Delaware Trust Building, Wilmington, Delaware, on March 23, 1966, at 10:30 a.m.

The meeting was called to order by the Chairman, The Honorable Clarence A. Southerland. Others present were:

Henry M. Canby, Esquire
Richard F. Corroon, Esquire
Honorable Elisha C. Dukes
Clair John Killoran, Esquire
Charles F. Richards, Jr., Esquire

In the absence of the Secretary, the Chairman requested that Charles F. Richards, Jr., Esquire, act as Secretary.

1. The Committee considered Charles S. Crompton, Jr.'s draft of statutes for uniform execution, acknowledgment, filing, and recording of instruments and the redraft of these sections by Mr. LePage, President of The Corporation Trust Company of New York. The Committee decided to disapprove both drafts and rejected the idea of uniform statutes on the subject. The Committee, however, felt that a change should be made in the present law to permit the Chairman of the Board to execute or acknowledge any

*Done
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has WKS
revised
his
revisions?*

document in the alternative to the president or vice president, where it is now provided that the president or vice president must execute or acknowledge a document. The Committee directed the legal secretaries to make this addition to the thirty-odd sections affected. Thus, for example, in Section 251 (c) of the present law, where it provides: "...and the agreement so adopted and certified shall be signed by the president or vice president and secretary or assistant secretary...", the new language will read, "... by the Chairman of the Board or by the president or by a vice president and by the secretary or an assistant secretary..."

open

2. The Committee next considered Mr. Canby's draft of Section 251. The Committee approved the following changes in that draft.

First, the Committee decided that the last sentence of subsection (a) should become a separate subsection which should be placed at the beginning of Section 251 as subsection (a). In addition, the Committee directed the insertion of quotation marks around the words "merger" and "consolidation" in that sentence. The Committee consequently approved the re-lettering of all the other subsections of this Section, i.e., (a) becomes (b); (b) becomes (c), etc., and directed that the re-lettering be checked in references to Section 251 in other sections.

done

done

done

OPEN

The Committee requested Mr. Canby to redraft the re-lettered subsection (c) to provide that the directors need not sign the merger agreement, that they need only meet as a Board and pass a resolution deeming it "expedient"

done

and for the best interests of the corporation" in a way similar to that provided by Section 271 for a sale of assets.

done

The Committee made other slight changes in the wording of Section 251 of Mr. Canby's draft as follows:

The word "separately" appearing in Line 1 of Page 2 was stricken. The words "this State" in Line 15 of Page 2 were stricken and in lieu thereof were inserted the words "the place of execution". The Committee inserted in Line 1 of Page 3, after the word "business", the words "in this State".

done
done
done

The Committee considered the suggestion of the firm of Dewey, Ballantine, Bushby, Palmer & Wood as commented on by Professor Folk at Pages 195 B and C. The Committee approved the language appearing at the bottom of Page 195 B and at the top of 195 C with one exception noted infra and directed that it be added as a new subsection (g) to Mr. Canby's redraft of Section 251. The one change in the language was in Line 4 of Page 195 C, the phrase "do not exceed the percent" was changed to read "do not exceed 15 percent".

done

3. The Committee approved the following changes in Section 252. The reference in subsection (c) to 251 (c) was modified in keeping with the re-lettering of Section 251 to read "251 (d)". The Committee noted and corrected the typographical error in Line 5 of Section 252 (d) by striking the word "for" and inserting in lieu thereof the word "or". The Committee approved the addition of a new subsection (e) to Section 252 as follows:

done
done
done

"(e) The provisions of Section 251 (g) shall apply to mergers under this Section."

4. The Committee amended the draft of Section 253 as follows:

It approved the deletion of the word "for" in Line 14 of subsection (e) and inserted in lieu thereof the words "of the value of". It approved the striking of all the words in Line 15 following the first word, "stock", and all the words in Line 16 and the entire first line of Page 6 of Mr. Canby's draft. The Committee approved the insertion of the word "a" in place of the word "the" on Line 3 of Page 6 of the redraft of Section 253. The Committee approved the striking of the words "provided for herein" on Line 4 of Page 6 and the insertion in lieu thereof of the words "after such period of 20 days".

The writer of these Minutes noted that as a result of the changes described for Section 253 (e), the sentence would not be grammatically correct unless the words "and if" were stricken in Line 12 of that subsection. The writer conferred with Mr. Corroon, the author of the other revisions of this section and obtained his approval. Unless the other members of the Committee direct otherwise, the legal secretaries will make this change under their vague authority as quasi-draftsmen.

5. The Committee approved a redraft of Section 254 (b) as follows:

"(b) Any one or more corporations existing under the laws of this State, may merge with one or more joint-stock associations existing under the laws of any ~~other~~ State or States of the United States, if the laws of such ~~other~~ State or States permit such a merger. Such corporation or corporations and such one or more joint-stock associations may merge into a single corporation which may be any one of such corporations, or a new corporation to be formed by means of such merger which new corporation shall be a corporation of this State."

6. The Committee requested Mr. Corroon to redraft Section 255 (b) and (c) in keeping with his suggestion that there need not be a meeting of both the governing body and the members of such a corporation where the governing body and the members are the same persons.

OPEN

7. It was decided to simplify the language of Section 256 (d) by incorporating language from Section 253 (a) which refers back to the same full language of Section 252 (d). Thus, Section 256 (d) will read as follows:

DONE

"(d) If the surviving corporation is organized or exists under the laws of any state or jurisdiction, other than the laws of this State, the provisions of section 252 (d) of this title shall also apply to a merger under this section."

8. Section 257 was modified as follows:

In the last line of Page 1 of the draft following the word "securities" the words "or membership interests" were inserted. In Line 1 of Page 2 of the draft of Section 257 the words following the word "from" were stricken. Lines 2, 3 and 4 were also stricken. The legal secretaries were directed to make changes in Section 257 (b) parallel to those changes to be drafted by Mr. Canby for Section 251 (c) as noted supra.

DONE

9. Section 258 (c) was amended to read the same as Section 256 (d) and the last part of 253 (a) i.e., to read as follows:

DONE

"(c) If the surviving corporation is organized or exists under the laws of any state or jurisdiction, other than the laws of this State, the provisions of section 252 (d) of this title shall also apply to a merger under this section."

10. Section 261 was amended by deleting the first line and inserting in lieu thereof "Any action or proceeding, whether civil, criminal, or administrative, pending...".

Done

11. The Committee directed the legal secretaries to make changes in Section 262 (b) in a way parallel to the changes made in Section 253 (e) as noted supra. According to the writer of these Minutes, this will mean the deletion of the last word in Line 9 of subsection (b), "If"; the deletion of the word "for" in Line 12 and insertion in lieu thereof of "of the value of"; the deletion of the words "such resulting" in Line 12; and elimination of all the words in Lines 13, 14 and 15 up to but not including the word "exclusive". Because of these changes in subsection (b), it will be necessary to change subsection (c) as follows:

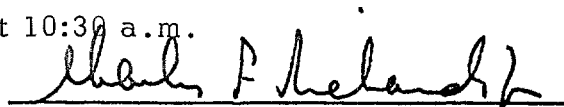
Done

Strike the word "the" in Line 1 and insert in lieu thereof the word "a". Following the word "days" in Line 1, insert the words "following the period of 20 days".

12. Mr. Corroon was requested to prepare a memorandum on his suggestion that cash be permitted to be given to shareholders in a merger in addition to securities under Section 251 and 253. Mr. Corroon was also requested to consider whether or not a sentence should be added to Section 262 providing that the remedy provided thereunder was in addition to any other remedy which might be available in law or equity.

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The meeting then adjourned. The next meeting was set by the Chairman for Thursday, March 31, 1966, at 10:30 a.m.


Charles F. Richards, Jr.
Acting Secretary

RICHARDS, LAYTON & FINGER
4072 duPont Building
Wilmington, Delaware 19801

RE: Minutes of the Thirtieth Meeting of the
Delaware Corporation Law Study Committee

DATE: 3/28/66

TO: All Committee Members

FROM: Charles F. Richards, Jr., Legal Secretary

I wish to make certain corrections in the Minutes of the Thirtieth Meeting.

1. The Minutes should reflect that Mr. Alfred Jervis was present.
2. The Minutes should also reflect that Mr. Alfred Jervis submitted a memorandum by Mr. LePage which was in favor of retaining the distinction between merger and consolidation as it heretofore has existed in the Delaware Corporation Law. Mr. Jervis read Mr. LePage's memorandum and urged its merits to the Committee. The Committee voted and rejected the idea that a separate definition should be continued in the Delaware Corporation Law for the term consolidation and, thus, rejected Mr. LePage's suggestion, Mr. Jervis dissenting.

✓ Noted
Done

CFRjr:lm

MINUTES OF THIRTY-FIRST MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The thirty-first meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl Potter & Anderson, Delaware Trust Building, on March 31, 1966. Those present were:

Hon. Clarence A. Southerland
Hon. Elisha C. Dukes
S. Samuel Arsht, Esq.
Clair J. Killoran, Esq.
Alfred Jervis
Richard F. Corroon, Esq.
Charles S. Crompton, Jr., Esq., Legal Secretary

In the absence of the Secretary, the Chairman requested the undersigned to act as temporary secretary for the meeting.

The Committee first considered the report of Mr. Killoran dated March 23, 1966, regarding the Folk Report, pages 249-256. The following actions were taken on this report:

1. Professor Folk's recommendation discussed on page 1 of the Killoran Report to transfer the provisions of Section 160, regarding a corporation's power to purchase and sell its own shares, to Section 122 was unanimously disapproved. *Done*

2. It was unanimously agreed, however, that Section 160 should be amended by adding the following language following the word "purchase": *Done*

"receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; but no such, etc. . . ."

Done

3. It was moved, seconded and unanimously adopted that Section 160(a) be further amended by the addition thereto of the underlined words set forth on pages 1 and 2 of the Killoran Report.

Done

4. The Committee deferred any action on the recommended addition of a subsection (b) to Section 160 pending further study of the proposal by the Committee.

later rejected

5. The Committee considered the Killoran recommendation on page 2 of his report that Sections 172 and 174 be amended as suggested on page 251 of the Folk Report to protect directors who rely on the reports of experts in connection with the purchase of the corporation's stock from surplus as well as upon the declaration of dividends therefrom. This recommendation was unanimously adopted. Mr. Arsht suggested that the legal secretaries consider whether the amended Sections 172 and 174 could be better located elsewhere than in the subchapter devoted to dividends.

Done

open

6. The Committee considered and unanimously approved the suggestion of Mr. Killoran on pages 2 and 3 of his report that Section 243(b) be amended by adding the word "such" in the fourth line thereof between the words "any" and "shares".

~~*Done*~~
open

7. The Committee next considered the suggestion on pages 3 and 4 of the Killoran Report dealing with reduction of capital, redeemed and reacquired shares. Mr. Killoran stated that his recommendation would be to amend Section 244 to permit the directors of a corporation, without shareholder approval, to retire the corporation's shares it has acquired from any surplus account.

A motion to so amend Section 244 was made and seconded. Mr. Arsht moved that the motion be amended to permit such purchase by director action from any source including stated capital. The amendment to the motion was defeated by a vote of 2 to 4. The vote on the original motion was then unanimously in favor thereof.

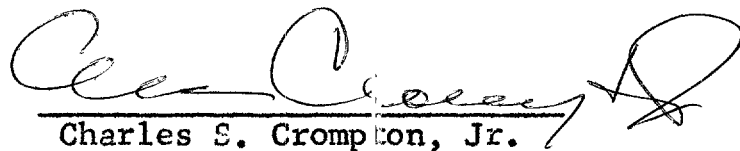
The suggestion of E. N. Carpenter, II, Esq. by letter of March 23, 1966, was next considered and the Committee unanimously approved the amendment of Section 213 to enlarge the record date therein from 50 to 60 days.

The Chairman next requested the Committee to consider the problem of sequestration, even though no committee-member reports thereon had been filed. A lively discussion followed wherein the Chairman stated his present opinion was to make no changes in the existing law since his recollection was that earlier efforts to revise the law in Delaware had been unsatisfactory. Mr. Corroon

suggested a change in the present law to limit sequestration in derivative or class actions to shares which the individual directors own in the corporation which is the subject of the litigation. The Secretary of State reported that many complaints from respected law firms outside of Delaware have been received by his office regarding the current state of the law. Mr. Jervis asked the Committee to consider the letter of the Chancellor to the Chairman dated December 29, 1964, regarding the topic.

The Chairman announced that the topic would be considered again by the Committee and requested Mr. Corroon to prepare a draft of his suggested amendment and circulate it to the members of the Committee.

The meeting was then adjourned.


Charles S. Crompton, Jr.
Acting Secretary

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MINUTES OF THIRTY-SECOND MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The thirty-second meeting of the Delaware Corporation Law Study Committee was held in the offices of Berl Potter & Anderson, Delaware Trust Building, Wilmington, Delaware, on the 15th day of April, 1966, with the Chairman presiding.

Those present were:

Honorable Clarence A. Southerland
Mr. David H. Jackman
Honorable Elisha C. Dukes
Mr. Alfred Jervis
S. Samuel Arsht, Esquire
Henry M. Canby, Esquire
Charles S. Crompton, Jr., Esquire

In the absence of the Secretary, the Chairman requested the undersigned to act as temporary secretary of the meeting.

The meeting began with a resumption of the discussion of the sequestration statute. Mr. Jervis reported that many of the corporations which his company serves had complained about the Delaware sequestration statute and he stated that, in his opinion, Delaware has lost prospective corporations because of the statute.

Mr. Arsht stated that he had discussed the problem with numerous members of the New York Bar and all had said they saw no great objection to the Delaware practice since they felt Delaware was a more favorable forum than any other available.

It was determined by the Committee that, due to the absence of several Committee members, further discussion of the matter would be deferred until the next meeting.

The Committee next discussed the report of S. Samuel Arsht, dated April 1, 1966, entitled "Surplus and Reserves", covering pages 257 to 260 of the Folk report. Mr. Arsht reported that the proposed revisions in his report were "implementing statutes" for the use of the new accounting definitions previously approved by the Committee. Mr. Canby noted his objection to the adoption of such definitions and it was unanimously agreed to reconsider the adoption of such definitions at the next meeting of the Committee. The consideration of the Arsht report on "Surplus and Reserves" and of the proposed subsection (b) to § 160 of the Code, presented on page 2 of the Killoran report, was also deferred until a decision was reached on the use of accounting definitions.

The Committee next considered the report of S. Samuel Arsht, dated April 1, 1966, entitled "Preemptive Rights", concerning pages 260 to 262 of the Folk report.

It was moved, seconded and unanimously adopted that the Delaware statute would prohibit preemptive rights, unless the corporate charter provided to the contrary, as recommended in the second alternative in the Arsht report.

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A discussion was held as to the scheduling of further meetings, and it was decided to attempt to have unanimous attendance at the next meeting of the Committee.

There being no further business, the meeting was adjourned.

Secretary of the Meeting.

MINUTES OF THIRTY-THIRD MEETING OF
DELAWARE CORPORATION LAW STUDY COMMITTEE

The thirty-third meeting of the Delaware Corporation Law Study Committee was held at the offices of Berl Potter & Anderson, Delaware Trust Building, on April 25, 1966. Those present were:

Hon. Clarence A. Southerland
Hon. Elisha C. Dukes
S. Samuel Arsht, Esq.
Henry M. Canby, Esq.
Clair J. Killoran, Esq.
David H. Jackman
Alfred Jervis
Irving Morris, Esq.
Mrs. Margaret S. Storey
Charles S. Crompton, Jr., Esq.

At the request of the Secretary and the Chairman, the undersigned acted as temporary secretary for the meeting.

The Committee resumed discussion of the problem of sequestration by considering the letter report of Mr. Morris dated April 15, 1966. Mr. Morris stated that he recommended no change in the sequestration law because of his belief that the high calibre of the Delaware judiciary created an excellent forum for decisions on important matters of corporate law. He stated that to limit the jurisdiction of the Delaware courts by amending the sequestration statutes would be to throw such

corporate litigation into courts of other jurisdictions not so intimately familiar with the Delaware corporation law and the substantial precedents thereunder.

Mr. Morris stated his opposition to the proposal made at an earlier meeting to limit sequestration in derivative actions to the stock of the corporation concerned.

The Secretary of State reported that he was concerned with the possibility of the sequestration statute being used to begin baseless stockholders' suits resulting in an undeserved settlement before trial. He feared that such harassment by groundless litigation would lead to corporations avoiding Delaware as a state of incorporation.

Mr. Morris replied to Mr. Dukes by citing the safeguards established to prevent the unwarranted settlement of such lawsuits, such as the notice and hearing provisions of Chancery Court Rule 23. Mr. Killoran stated his full agreement with Mr. Morris' position.

Mr. Jervis stated his concern with the fact that Delaware is the only jurisdiction with such a sequestration statute and reported that several of his company's corporate clients had been reluctant to incorporate here solely because of this statute. Mr. Jackman reported that his company's clients were

also fearful of the problem of the sequestration statute in Delaware.

Mr. Arshé stated that, in his opinion, the statute did not breed litigation but merely made Delaware a convenient forum for lawsuits which would, absent the statute, be brought in some other jurisdiction. He stated that such foreign litigation would make the substantive provisions of the Delaware corporation law much less attractive if they were to be construed by courts of some other jurisdiction not bound by the substantial Delaware precedents under the code.

After further discussion, the Committee unanimously agreed that a proposed amendment to the sequestration statute should be prepared for further consideration by the Committee to limit the statute's application in derivative actions to shares in the corporation which is the subject of the suit. The Chairman requested Mr. Canby to prepare and circulate such a draft for consideration by the Committee. Mr. Morris asked if the Committee intended by such proposed amendment to eliminate the sequestration of all property except the shares in the corporation concerned in the suit, and it was the consensus of the Committee that the proposed amendment should not limit the power to sequester any property except shares of

stock in other Delaware corporations than that concerned in the lawsuit.

The Committee next reviewed its prior decision of July 14, 1965, to amend the code by adoption of the standard accounting definitions recommended by Professor Folk. After some discussion, it was moved, seconded and unanimously agreed that the decision of July 14th with respect to the adoption in the Delaware code of the standard accounting terms be reversed and that the existing statutory terms remain unchanged in the code.

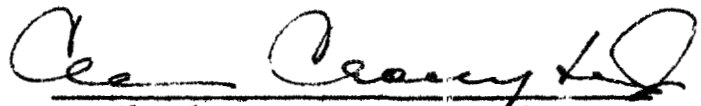
Mr. Arsht suggested that an amendment could be made in Sections 170 and 154 to further clarify the meaning of the terms "net assets" to mean assets less liabilities. It was moved, seconded and carried that this suggested change be rejected.

The Committee next considered the proposed addition of a new subsection (b) to Section 150 of the code presented in the Killoran Report of March 23, 1966. Mr. Killoran withdrew his suggestion that such a new subsection be added to the code and the suggested change was thereby disapproved.

The Secretary of State presented an inquiry he had received from out-of-state counsel for a Delaware corporation

regarding the disposition by the corporation of unclaimed dividends and asked if the Committee had considered the possibility of an addition to the statute to deal with this problem. The Chairman reported that the Committee had earlier considered this question and decided that it was not a question to be considered by this Committee. He suggested that Mr. Dukes refer his inquiry to the appropriate Bar Association committee.

The meeting was then adjourned.


Charles S. Crompton, Jr.
Acting Secretary