

Opinion No. 185**Corporations—Powers—Articles of Incorporation—Sale of Assets—Board of Directors.**

HELD: A corporation may not provide in its articles for an absolute grant of power to its board of directors to sell all the corporate assets at the pleasure of the board.

April 28, 1933.

You request an opinion from this office on the articles of incorporation submitted of "William L. Butler, Inc. of Montana."

Paragraph numbered 6 on pages 2 and 3, and paragraph numbered 9 on pages 3 and 4, are as follows:

"6. To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer or otherwise dispose of the whole or any part of the property, shares of capital stock of, or any bonds, securities, or other evidence of indebtedness created by, assets, business, good will and rights, and to undertake or assume the whole or any part of the bonds, mortgages, franchises, leases, contracts, indebtedness, guarantees, liabilities and obligations of any person, firm, association, corporation or organization, and to pay for the same or any part or combination thereof in cash, shares of the capital stock, bonds, debentures, stocks, notes, or other obligations of the corporation or otherwise, or by undertaking and assuming the whole or any part of the liabilities or obligations of the transferor; and to hold or in any manner dispose of the whole or any part of the property and assets so acquired, and to conduct in any lawful manner the whole or any part of the business so acquired and to exercise all the powers necessary or convenient in and about the conduct, management and carrying on of such business."

"9. To purchase, subscribe for, acquire, own, hold, sell, exchange, assign, transfer, mortgage, pledge, or otherwise dispose of shares or voting trust certificates for shares of the capital stock, or any bonds, notes, securities or evidence of indebtedness created by any other corporation, or corporations organized under the laws of this state or any other state or district or county, nation or government, and also bonds or evidence of indebtedness of the United States or of any state, district, territory, dependency, or county or subdivision or municipality thereof; to issue in exchange therefor shares of the capital stock, bonds, notes or other obligations of the corporation and, while the owner thereof, to exercise all the rights, powers, and privileges of ownership including the right to vote on any shares of stock or voting trust certificates so owned; to promote, lend money to and guarantee the dividends, stocks, bonds, notes, evidences of indebtedness, contracts or other obligations of and otherwise aid in any manner which shall be lawful any corporation or association of which any bonds, stocks, voting trust certificates, or other securities or evidences of indebtedness shall be held by or for this corporation, or in which, or in the welfare of which, this corporation shall have any interest, and to do any acts and things permitted by law and designed to protect, preserve, improve or enhance the value of any such bonds, stocks, or other securities or evidences of indebtedness or the property of this corporation."

It appears to us that these two paragraphs might be construed to authorize this proposed corporation to engage in investment banking, and also perform the functions of a surety corporation. It is true that corporations engaging in investment banking must be incorporated under the special act relating to such business, but to avoid confusion it would be well to have these two sections revised and restricted, or add a proviso about as follows:

"Provided that these articles of incorporation shall not be construed to authorize the corporation created hereby to engage in nor attempt to carry on any business described in or

authorized by Chapter 89 of the Laws of 1927, or to engage in or carry on a surety business."

Paragraph "Ninth" on sheet 7 of the articles submitted is as follows:

"Ninth: The directors shall have the power to make such prudential by-laws as they may deem proper for the management of the affairs of this company, according to the statutes in such case made and provided, and shall have the power and general authority to sell, lease, mortgage, exchange, or otherwise dispose of the whole or any part of the property of said corporation by vote of a majority of the board of directors without being required to obtain a vote or the consent of the stockholders of the company, before so doing."

Section 6004, R. C. M. 1921, as amended by Chapter 42, Laws of 1931, provides a specific mode by which a corporation may sell all its assets. Section 5905 R. C. M. 1921, as amended by Chap. 35, Laws of 1931, specifies what articles of incorporation shall contain. Nothing in this last named section contemplates such a provision as paragraph "Ninth," authorizing the sale of all the corporation's property by the board of directors. It is our opinion that section 6004 controls.

In *Newton v. Weiler*, 87 Mont. 164, the Supreme Court said: "Where general and special provisions are repugnant, the latter control over the former." The rule is also applicable to constitutional provision. Special statutory provisions control those that are general. (34 Montana and Pacific Digest, Statutes, Key 194.) When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode. *Botany Mills v. United States*, 278 U. S. 283; *Paso Robles Mer. Co. v. Com'r. Int. Revenue*, 33 Fed. (2) 653; *In re Barnett Est.*, 97 Cal. App. 138; *Brown v. City Council*, 258 Pac. 693; *Perkins v. Thornburgh*, 10 Cal. 189; *Johnston v. Baker*, 167 Cal. 260; *Fancher v. Board of Commissioners*, 210 Pac. 237.) In *Dosen v. East Butte Copper Mining Co.*, 78 Mont. 579, the Supreme Court said: "Every word, phrase, sentence and section of a statute must be given meaning, if possible, and no part declared inoperative if reasonably avoidable."

If a corporation were authorized to provide in its articles an absolute grant of power to its board of directors to sell all the corporate assets, at the pleasure of the board, such corporation would be empowered to absolutely nullify section 6004, supra.

We are therefore of the opinion that paragraph "Ninth" on sheet 7 is repugnant to section 6004, as amended, and must be eliminated.