The Minnesota Business Corporation Act

Harvey Hoshour
THE MINNESOTA BUSINESS CORPORATION ACT

By Harvey Hoshour*

The need for a complete revision of the business corporation statutes of Minnesota has long been recognized. So long as the double liability of shareholders was retained, much of the incentive towards such a revision was lacking, however, in that Minnesota enterprises almost certainly would have continued generally to incorporate elsewhere notwithstanding any revision that might be made. But when this difficulty was removed by the abolition of double liability, a committee of the State Bar Association was appointed to draft and submit a new business corporation law for Minnesota. As a result of its work and recommendations, the latter concurred in by the bar association, there has recently been enacted what in the law is called the Minnesota Business Corporation Act.²

It is not the purpose of the present article to discuss or even to outline all the changes in nomenclature, procedure or substance in the new act. Rather its purpose is to consider some of the more important problems which confronted the committee, and to indicate the reasons which led to the conclusions as to these problems which now appear in the act as approved.

Obviously the most serious difficulty in drafting a law for business corporations is to give the management sufficient latitude so that the business of the corporation may be carried on expeditiously and without too much interference from the shareholders or creditors, and at the same time adequately to protect the shareholders and creditors from the machinations of the management where there have been abuses. It is recognized that this difficulty

---

*Of the New York Bar; formerly Professor of Law, University of Minnesota.

¹See note in (1931) 15 Minnesota Law Review 222.

²Minnesota Laws 1933, ch. 300.
may not have been solved perfectly in the act as to each problem in which it arises, and that experience may justify or even require changes in this connection, but the committee's purpose and studied determination here has been so to balance the competing viewpoints suggested as best to serve the public interest. It is not contemplated that Minnesota should go into the corporation baiting business, nor that the adoption of the new act will bring large numbers of businesses from other states into Minnesota for incorporation. But it is believed that legitimate Minnesota enterprises should incorporate here, and that the law of Minnesota should be so drawn as to facilitate such incorporation. These things have been kept in mind in forming the act as submitted and approved.

In formulating its recommendations the committee received much help from the uniform business corporation act, the general arrangement of which our act follows. The recently adopted California general corporation law was found to be very helpful. Also the business corporation laws of Ohio, Delaware, Louisiana and other states were used for purposes of comparison. But each question was considered in detail by the committee and its independent judgment reached thereon, in some cases that conclusion being distinctly different from that of any of the other state statutes so far as known to the committee. Perhaps it should also be added that the committee had before it when each problem was under consideration a brief prepared by one of its members as to the then statutory and case law in Minnesota as to that problem.

DE FACTO CORPORATIONS

One of the most interesting developments in the law of corporations is that which has to do with the doctrine of corporations de facto. While Machen well says: "As an original question, it is very difficult to sustain this prevalent American doctrine," the

---

3The Uniform Business Corporation Act was drafted by the National Conference of Commissioners on Uniform State Laws and approved and recommended for enactment in the states by the National Conference in 1928. The uniform act was also approved by the American Bar Association at its Seattle meeting in 1928.
4California, Civil Code, (Deering's 1931) secs. 277 ff.
5Minnesota Business Corporation Act, Minnesota Laws 1933, ch. 300.
"Sec. 7. The certificate of incorporation issued by the secretary of state in accordance with the provisions of section 5 of this act shall be conclusive evidence of the fact of incorporation. Nothing in this section shall limit the existing rules of law as to corporations de facto, nor as to corporations by estoppel."
6Machen, Corporations 242.
concept of corporations de facto has been judicially approved in almost every state in the country, and in no jurisdiction has this approval been more definite than in Minnesota. Finnegan v. Noerenberg\(^7\) is a leading case on the subject. In an earlier case\(^8\) the court said that the doctrine of corporations de facto "is not found-
ed upon any principle of estoppel, as is sometimes assumed, but upon the broader principles of common justice and public policy." In a recent case\(^9\) the court thus summarized the rules of law in this connection:

"It is settled law that in order to create a de facto corporation three things are essential: (1) the existence of some law under which such a corporation may lawfully be created; (2) a colorable and bona fide attempt to organize a corporation under the law, and (3) the exercise of corporate powers and functions by the organi-
zation so formed."

The policy underlying the cases as to corporations de facto is believed to be wholly sound, and it is not the purpose of the new act to limit the existing rules of law either as to corporations de facto or as to corporations by estoppel. Rather it has been thought desirable to follow the English companies' act\(^10\) and the uniform business corporation act\(^11\) in extending those rules so as to make the certificate of incorporation issued by the secretary of state conclusive evidence of the fact of incorporation. What constitutes "colorable compliance" is often a doubtful question,\(^12\) and, while the existing rules of law in Minnesota would almost certainly hold a group which had gone so far as to procure a certificate of incorporation to be a corporation de facto, it would seem that in such case the proof requirements of the present rules may well be dis-

**REVOCABILITY OF FORMATIVE SUBSCRIPTIONS\(^13\)**

By the weight of judicial authority a formative subscription

\(^7\)(1893) 52 Minn. 239, 53 N. W. 1150, 38 Am. St. Rep. 552, 18 L. R. A. 778.

\(^8\)Trustees of East Norway Lake Church v. Froislie, (1887) 37 Minn. 447, 451.


\(^10\)Sec. 17.

\(^11\)Sec. 9.

\(^12\)See Johnson v. Okerstrom, (1892) 70 Minn. 303, 73 N. W. 147 and (1932) 16 MINNESOTA LAW REVIEW 206.

\(^13\)Minnesota Business Corporation Act, Minnesota Laws 1933, Ch. 300. "Sec. 16. II. Unless otherwise provided in the writing, subscriptions for
may be revoked at any time prior to the formation of the corporation and the acceptance of the subscription. This conclusion obviously follows from the generally accepted view that such subscriptions are in the nature of offers to the proposed corporation. However logical the majority rule be, it may and often does lead to injustice where the promotion process proceeds in good faith and in reliance on formative subscriptions which thereafter are revoked. Accordingly some courts have held that a formative subscription is a contract between the subscribers to become shareholders, and as such irrevocable from the time of the subscription unless all the subscribers consent to a cancellation before acceptance by the corporation. The case of Minneapolis Threshing Machine Co. v. Davis commits Minnesota to the minority view. But the minority view is also objectionable in some respects: (1) ordinarily the subscribers do not intend to contract with each other, and (2) in a particular case the subscribers may be held bound for an unreasonable length of time.

While approving the general policy of the minority rule, the Minnesota Act attempts to meet both the objections to that rule stated. Formative subscriptions are made irrevocable by legislative act, thus disposing of the necessity for a strained finding of intent to contract with the other subscribers or an expression of such intent. But that irrevocability ceases and the subscriptions become void if no certificate of incorporation be issued within one year from the time the first formative subscription is obtained, or if there be no acceptance within sixty days after the issuance of the certificate of incorporation. By these provisions it is believed that both the promoting group and those who subscribe are adequately and properly protected, and that a rule consonant with sound policy is stated.

**Ultra Vires Acts**

Commentators on the law of private corporations uniformly

shares of a corporation to be formed shall be:

```
(a) Irrevocable until sixty days after the issuance of the certificate of incorporation, but void unless accepted within said period; and

(b) Irrevocable for a period of one year after the first subscription for shares of such corporation if no certificate of incorporation shall be issued within such period of one year, but void upon the expiration of such year.
```

14See Ballantine, Corporations 113, 114.
15See Ballantine, Corporations, 115-117.
16(1889) 40 Minn. 110, 41 N. W. 1026, 12 Am. St. Rep. 701.
17Minnesota Business Corporation Act, Minnesota Laws 1933, Ch. 300.
“Sec. 11. 1. Every corporation shall confine its acts to those authorized
recognize that there is much confusion in the decided cases as to ultra vires. Machen says: "The authorities are in utter confusion." Ballantine adds: "Rules have been laid down without intelligible policy or principle." In an article in the American Law Review the author of Thompson on Corporations comments vividly:

"After having given a long and attentive study to the subject, the writer affirms that the Anglo-American law with reference to it is in a state of hopeless and inextricable confusion; that contradictory decisions are constantly rendered by the same courts; that opposing principles, tending to contrary results, jostle and crowd each other as the ice floes jostle and crowd each other going southward out of Baffin's Bay through Davis Straits; and that the judge seizes upon one of these principles today and tomorrow upon another, and enlarges it or applies it according to the seeming exigencies of justice in the particular case."

Broadly speaking, however, the cases as to ultra vires represent two more or less well defined viewpoints. One is illustrated by the language of the opinion in Central Transportation Co. v. Pullman's Car Co.:18

"The objection to the contract is, not merely that the corporation ought not to have made it, but that it could not make it. The contract cannot be ratified by either party, because it could not have been authorized by either. No performance on either side can give the unlawful contract any validity, or be the foundation of any right of action upon it."

The view expressed is that followed by the federal courts and

by the statement of purposes in the articles of incorporation and within the limitations and restrictions contained therein, but shall have the capacity possessed by natural persons to perform all acts within or without this state.

"II. No claim of lack of authority based on the articles shall be asserted or be of effect except by or on behalf of the corporation (a) against a person having actual knowledge of such lack of authority, or (b) against a director or officer.

"III. The provisions of this section shall not affect:

"(a) The right of shareholders or the State to enjoin the doing or continuing of unauthorized acts by the corporation; but in such case the court shall protect or make compensation for rights which may have been acquired by third parties by reason of the doing of any unauthorized act by the corporation.

"(b) The right of a corporation to recover against its directors or officers for violation of their authority."

18Machen, Corporations, p. 823.
19Ballantine, Corporations, 236.

20Thompson, The Doctrine of Ultra Vires in Relation to Private Corporations, (1894) 28 Am. L. Rev. 376.

minority of state courts, and is frequently called the "special capacity" doctrine.

On the other hand most of the state courts follow what is often referred to as the "general capacity" doctrine, the underlying thought of which is expressed in the opinion of Chief Judge Cornstock in the well known case of *Bissell v. Michigan So. & N. I. R. Co.* as follows:

"To say that a corporation has no right to do unauthorized acts, is only to put forth a very plain truism; but to say that such bodies have no power or capacity to err, is to impute to them an excellence which does not belong to any created existence with which we are acquainted. The distinction between power and right is no more to be lost sight of in respect to artificial than in respect to natural persons. . . . When we speak of the powers of a corporation, the term only expresses the privileges and franchises which are bestowed in the charter, and when we say it cannot exercise other powers, the just meaning of the language is, that as the attempt to do so is without authority of law, the performance of unauthorized acts is a usurpation which may be a wrong to the state, or, perhaps, to the shareholders. But the usurpation is possible. In the same sense natural persons are under restraint of law, but they may transgress the law, and when they do they are responsible for their acts."

There can be no doubt that the Minnesota court has in general followed the "general capacity" theory as to ultra vires, although there is language in an early case which seems to approve the "special capacity" doctrine. Thus the Minnesota cases hold that ultra vires contracts are enforceable by a party who has fully performed. The most common explanation here is that one who has received the benefit of the contract is estopped to set up ultra vires. It may be doubted whether there is a true estoppel here, for the element of reliance is absent where the corporation is seeking to enforce the contract, in that the corporation must have known of its lack of power to make the same. Further, there is authority

---

22 (1860) 22 N. Y. 258, 264.
23 Rochester Insurance Co. v. Martin, (1868) 13 Minn. 59 (Gil. 54).
in Minnesota in support of the proposition that those dealing with a corporation have constructive knowledge of its charter limitations. Therefore it seems doubtful if there is a true estoppel in these cases. That the court has recognized this difficulty is apparent from its opinion in Seymour v. Chicago Guaranty Fund Life Society:

"But there are few rules better settled or more strongly supported by authorities, with fewer exceptions, in this country, than that when a contract by a private corporation, which is otherwise objectionable, has been performed on one side, the party which has received and retained the benefits of such performance shall not be permitted to evade performance on the ground that the contract was in excess of the purpose for which the corporation was created. The rule may not be strictly logical, but it prevents a great deal of injustice."

Whether the court would apply the "estoppel" theory where plaintiff has only partly performed is not altogether clear from the Minnesota decisions, but language in the opinions in City of Marshall v. Kalman, and Benson Lumber Co. v. Thornton indicates that it probably would do so, the court in the latter case saying:

"The present tendency is to restrict the defense of ultra vires in actions between private parties as far as possible, if not to deny it altogether, except in cases of contracts wholly executory."

Without doubt, however, the new Act goes beyond the case law of Minnesota in making wholly executory ultra vires contracts enforceable. A well known commentator has pointed out that this is the more desirable view, but so far as the writer knows there is only one case so holding. It was believed by the committee, however, that, once the "general capacity" doctrine be approved, logically it should lead to the enforcement of wholly

---


26 (1893) 54 Minn. 147, 55 N. W. 907.

27 (1922) 153 Minn. 320, 190 N. W. 597.

28 (1932) 185 Minn. 230, 240 N. W. 651.

29 It is squarely held in National Finance Co. v. Cramer, (1923) 156 Minn. 79, 194 N. W. 108 that an ultra vires contract wholly executory is not enforceable.

30 Machen, Corporations, 858.

executory contracts, and our act follows the uniform act and the California, Ohio, Louisiana and Michigan acts in effect so providing. Our act, however, approves the limitation of the Ohio and Michigan acts that ultra vires may be a defense to the corporation as against a person who had actual knowledge of the corporation's lack of authority. The California law does not contain this limitation and there is much to be said for that view, but the majority of the committee thought the limitation referred to state the more desirable policy in this connection.

One of the most important functions (if not the only valid function) of the ultra vires doctrine is that the shareholders may be protected from the risks of an enterprise which they have not authorized. Accordingly the cases in Minnesota and elsewhere hold that a non-consenting shareholder may enjoin an ultra vires act. If an ultra vires contract has not been entered into but is only contemplated, there is no difficulty here. The shareholders' interests demand that the right to enjoin be preserved. But where such a contract has been made without knowledge in the other party that it is ultra vires, and thereafter a shareholder's suit to enjoin is brought, a difficult problem is presented. The California act here expressly gives priority to the rights of the third party and the Ohio Act impliedly does so. Our act, however, does not take away the shareholder's right to an injunction here, but provides that the court in such case "shall protect or make compensation for rights which may have been acquired by third parties." What is sacrificed in definiteness by these provisions is believed to be compensated for by fairness and justice to shareholders and third parties alike.

Reference has already been made to the Minnesota cases holding that those who deal with corporations have constructive notice of their charter limitations. Almost the sole use that has been

---

32 See Ballantine, Questions of Policy in Drafting a Modern Corporation Law, (1931) 19 Cal. L. Rev. 465, 475.
34 California, Civil Code (Deering's 1931) sec. 345.
36 See note 25 supra.
made of this rule in the Minnesota cases has been to limit the application of the now abolished constitutional double liability of shareholders.\(^{37}\) Followed to its logical conclusion the doctrine of constructive notice would preclude the enforcement of all ultra vires contracts by third parties, for part or full performance by such parties could not take away the effect of the knowledge with which they were chargeable under the doctrine of constructive notice. Further, it is believed that the only real policy behind the recording statutes as to articles of incorporation is to give a means of acquiring knowledge of the contents of the articles, and that the constructive notice doctrine is neither fair nor practicable.\(^{38}\) Accordingly our act follows the uniform act and the other acts the committee has used for comparison in wholly doing away with whatever is left of this doctrine.

**LIABILITY FOR DILUTION OF EXISTING SHARES\(^{39}\)**

There can be no doubt that shareholders are often damaged by dilution of their shares when subsequent allotments of shares in the corporation are made for a consideration that is unfairly low;\(^{40}\) but so far as the writer knows the Minnesota act is the only one that attempts directly to meet this problem. This prob-


\(^{38}\)Ballantine, Corporations, 279.

\(^{39}\)Minnesota Business Corporation Act, Minnesota Laws 1933, ch. 300.

"Sec. 15. I. Shares with or without par value shall not be allotted for a cash consideration which is unfair to the then shareholders nor for a consideration other than cash upon a valuation thereof which is unfair to such shareholders.

"II. Directors or shareholders who, willfully or without reasonable investigation, either make an allotment of shares for a cash consideration which is unfair to the then shareholders or so overvalue property or services received or to be received by the corporation as consideration for shares allotted, shall be jointly and severally liable to the corporation for the benefit of the then shareholders who did not assent to and are damaged by such action, to the extent of their damages. Directors or shareholders who are present and entitled to vote but fail to vote against such allotment or valuation shall be considered, for the purposes of this section, as participating in such allotment or valuation.

"III. No action shall be maintained against a director or shareholder under the provisions of this section unless commenced within three years from the date on which such allotment was made."

\(^{40}\)See Bonbright, The Dangers of Shares without Par Value, (1924) 24 Col. L. Rev. 449, 466.
lem is more likely to arise in cases which involve non-par shares, but it exists also as to shares with par value where the fair value of the shares subsequently allotted is above par, in which case the requirement that par be paid for all shares allotted does not protect prior shareholders from the danger of dilution.

To some extent the doctrine of preemptive rights offers protection to the existing shareholders here, but the articles may limit or deny that right, and often the existing shareholders are not in position to make an additional investment when the new shares are offered. It seemed to the committee that the only fair way to meet this problem was to give the shareholders damaged by a later allotment at a price unfair to them a cause of action against those representing the corporation in making the allotment, and, since a remedy to the shareholders individually would often be ineffective in that the expense of suit would be prohibitive, our Act gives the right to sue in this case to the corporation for the benefit of the shareholders damaged. In this manner it is believed that one of the most common types of managerial abuse may effectively be handled where it exists, and, what is more important, be prevented in the future.

**Payment of Dividends**

Under the Minnesota law prior to the approval of the new

---

41 Minnesota Business Corporation Act, Minnesota Laws 1933, ch. 300, sec. 3 I (i).
43 "Sec. 21. II. A corporation may declare dividends in cash or property only as follows:

"(a) Out of earned surplus;

"(b) Out of paid-in surplus, provided, that if there are outstanding shares entitled to preferential dividends, then dividends may be declared out of paid-in surplus only upon such shares. When dividends are paid from paid-in surplus, notice of such fact shall be given to the shareholders receiving the same concurrently with the payment thereof;

"(c) Out of its net earnings for its current or for the preceding fiscal year, whether or not it then has a paid-in or earned surplus, provided that if there are outstanding shares entitled to a preference upon liquidation, such dividends shall not be paid upon any other shares except to the extent that the fair value of its assets, determined as set forth in subdivision I of this section, exceeds the aggregate of its liabilities and its stated capital represented by all shares entitled to a preference upon liquidation; provided, further, that no such dividend shall be declared if the fair value of the assets of the corporation is less than the aggregate of its liabilities, including such proposed dividend as a liability.

"III. A corporation may declare dividends payable in shares of the
act it was doubtful whether dividends might be paid to shareholders from paid-in surplus, and indeed it is not altogether clear that a paid-in surplus could legally be created at all in the case of stock without par value. However, in view of the reference to paid-in surplus contained in the statute authorizing the issuance of stock without par value, it seems likely that this type of surplus might have legally been created. But section 7470 of the General Statutes provides that dividends shall be declared from "profits," and that they "shall not thereby reduce the capital while there are outstanding liabilities." If there is a valid paid-in surplus, obviously dividends paid therefrom will not impair "the capital," but it seems doubtful whether a paid-in surplus may properly be classified as a "profit." The few cases in point are squarely divided.

The new act clears up this difficulty by expressly providing under what circumstances a paid-in surplus may be created, and that dividends may be declared therefrom, with the limitation, however, that "if there are outstanding shares entitled to preferential dividends, then dividends may be declared out of paid-in surplus only upon such shares." The act also provides that notice of the fact that dividend payments are made from paid-in surplus shall be given to the shareholders at the time they receive the same, thus precluding a natural misapprehension in the minds of shareholders.

Corporation only as follows:

"(a) Out of earned surplus;

"(b) Out of paid-in surplus, provided, that notice of such fact shall be given to the shareholders receiving such dividends concurrently with the payment thereof;

"(c) Upon declaration of a dividend payable in shares, the amount of surplus from which such dividend is declared shall be capitalized. If a dividend is declared in shares having a par value, the amount of surplus so to be capitalized shall equal the aggregate par value of such shares. If a dividend is declared in shares without par value then if such shares are preferred shares they shall be capitalized at the amount to which such shares, upon involuntary liquidation, are entitled in preference to shares of another class or classes, or if such shares are common shares they shall be capitalized on the basis of the estimated fair value of such shares upon allotment as determined by the board of directors;

"(d) No dividend payable in shares of any class shall be paid to shareholders of any other class unless the articles so provide or such payment is authorized by the vote or written consent of the holders of two-thirds of the shares of the class in which the payment is to be made."

44Mason's 1927 Minn. Stat. sec. 7470-10.
many shareholders that their dividends necessarily are from the corporation's earnings. As so limited, there seems no reason why a paid-in surplus should not be available for dividends.

The act also permits the payment of dividends where there are current earnings, but the stated capital has become impaired. A majority of the committee thought that, with the limitations contained in section 21, II(c), dividends might properly be declared out of the net earnings of the current or preceding fiscal year whether or not the corporation has an earned or paid-in surplus. Somewhat similar provisions are contained in the laws of California, Delaware, and Michigan. Substantially the same result in this connection could be obtained by a reduction of stated capital, and it seemed to the committee that the corporation's management should be permitted gradually to restore the stated capital out of earnings over a period of years, rather than be required to choose immediately between the declaration of no dividends and the reduction of the stated capital.

Some corporations have made a practice of allotting shares without par value as dividends to shareholders, thereupon capitalizing these shares at only a nominal or very small amount. This has the practical effect of giving many shareholders a false impression of the corporation's earnings or financial status, in that they think the market value of the shares they receive has been earned by or exists as a surplus of the corporation. This practice is prevented by the provisions of section 21, III(c) that in such case if the shares allotted as share dividends are preferred shares they must be capitalized at their liquidation preference price, or if they are common shares "on the basis of the estimated fair value of such shares upon allotment as determined by the board of directors." It is believed that these provisions, which are somewhat similar to the California law in this respect, will make impossible or at least very improbable what seemed to the committee to be a type of managerial abuse.

VOTING TRUSTS

The supreme court of Minnesota has several times avoided

---

47California, Civil Code (Deering's 1931) sec. 346.
48Delaware, Laws 1931, sec. 34.
49Michigan, sec. 32.
50See Sec. 38, Minnesota Business Corporation Act, Minnesota Laws 1933, ch. 300.
51California, Civil Code (Deering's 1931) sec. 346(a).
52Minnesota Business Corporation Act, Minnesota Laws, 1933, ch. 300.
deciding the question as to whether voting trusts are valid, but such trusts created for a proper purpose have been held not to violate the Minnesota law by the federal courts. On the subject of validity of voting trusts there has been a definite modification of the older view that such trusts are invalid on the ground that every shareholder is entitled to have the judgment of every other shareholder in the election of the directors, the modern cases recognizing that a representative meeting of the shareholders of larger corporations would be impracticable in many cases and holding that if the voting trust is for a legitimate purpose it will be sustained. A similar tendency is apparent in the legislative enactments, and the California, Delaware, Ohio, and Louisiana acts all contain specific authorization of voting trusts, as does the uniform act.

The Minnesota act limits the duration of voting trusts to fifteen years, except where made in connection with an indebtedness of

"Sec. 26. I. Shares of stock in any corporation may be transferred to a trustee or trustees, pursuant to written agreement, for the purpose of conferring on such trustee or trustees the right to vote and otherwise represent such shares for a period not exceeding fifteen years, except that in case such agreement is made in connection with an indebtedness of the corporation such voting trust may extend throughout the period of such indebtedness, all in the manner and upon the conditions in such agreement stated. Unless otherwise specified therein, such voting trust may be terminated at any time by the holders of a majority in interest of the beneficial interests thereunder.

II. A duplicate of the voting trust agreement shall be filed in the registered office of the corporation and shall there be open to inspection by any shareholder, and by any holder of any beneficial interest under such agreement, and by the agents of either, in like manner and upon such conditions as the books of the corporation are open to inspection by a shareholder.

III. Unless otherwise provided in such agreement, (a) the trustees may vote in person or by proxy; (b) if there are two or more trustees, the manner of voting shall be determined as provided in subdivision VI of Section 25 of this Act; (c) vacancies among the trustees shall be filled by the remaining trustees; and (d) a trustee shall incur no personal liability except for his own neglect or malfeasance."


54 The change in attitude of the courts with reference to the validity of voting trusts is well outlined in the opinion in the Mackin Case, (C.C.A. 8th Cir. 1928) 25 F. (2d) 783, 786, 787.

55 California, Civil Code (Deering's 1931) sec. 321 (a).

56 Delaware, Laws 1931, sec. 18.


58 Louisiana, Laws 1928, Act 250, sec. 33.

59 Sec. 29.
the corporation, in which case the trust may extend throughout
the period of such indebtedness. Perhaps it should be added that
there can be no doubt that the common law limitation that a voting
trust must be for a lawful purpose is applicable to trusts author-
ized by the new act. But the effect of the act in this connection
is definitely to settle what has been an open question in Minnesota
as to whether voting trusts are valid, as well as to provide both
limitations and regulations as to such trusts which are believ'd to
represent a sound public policy.

Cumulative Voting

Without cumulative voting an organized majority of share-
holders is able to elect all the directors of the corporation and thus
obtain complete control of its management. Cumulative voting
makes possible minority representation on the board by giving
each shareholder the privilege of multiplying the number of votes
represented by his shares by the number of directors to be elected,
and the further privilege of casting all such votes for one candi-
date or distributing them among various candidates. In some
states the shareholders' rights to cumulate their votes is unalter-
ably given by constitution or statute. But in a large number of
states, including Minnesota, statutory permission has been given
to include a provision for cumulative voting in the articles, but
the same is not required to be so included. The new Act makes
cumulative voting permissible unless otherwise expressly pro-
vided in the articles. In addition it limits cumulative voting to
those cases in which a shareholder has notified the president or
secretary not less than twenty-four hours before the meeting that
he intends to cumulate his votes, whereupon it is the duty of the

---

61Minnesota Business Corporation Act, Minnesota Laws 1933, ch. 300.
"Sec. 25. III. If notice in writing is given by any shareholder to the presi-
dent or secretary of a corporation not less than twenty-four hours before the
time fixed for holding a meeting for the election of directors that he in-
tends to cumulate his votes in such election, each shareholder shall have
the right to multiply the number of votes to which he may be entitled by
the number of directors to be elected, and he may cast all such votes for
one candidate or distribute them among any two or more candidates. In
such case it shall be the duty of the presiding officer upon the convening
of the meeting to announce that such notice has been given. If the articles
of incorporation expressly provide that there shall be no cumulative vot-
ing, the provisions of this subdivision shall be inapplicable to such corpora-
tion."

62See Ballantine, Corporations 575.
63Mason's 1927 Minn. Stat., sec. 7462.
presiding officer to announce that such notice has been given. Unless so limited cumulative voting may lead to minority control,⁶⁴ perhaps as undesirable as the total elimination of the minority from the directorate of the corporation. With the limitation stated all the shareholders present at the meeting know that cumulative voting is to be practiced, and it is to be assumed in such situation that the majority will so protect itself by cumulating its votes as to prevent minority control. Our act in the respect last indicated follows in substance the Ohio act, and is believed to offer a better solution to the problems incident to cumulative voting than is contained in the statutes generally.

("To be concluded")

⁶⁴This actually happened in Schwartz v. State ex rel. Schwartz, (1900) 61 Ohio St. 497, 56 N. E. 201.