

ESSAY QUESTION NO. 5

Answer this question in booklet No. 5

Larry and Sally form a “for profit” corporation in Alaska named “Anchorage Real Deal Co.” The articles of incorporation state that the corporation is formed “for the purpose of developing real estate, and for any other lawful purpose.” The articles provide for 3 directors. The articles do not address the voting rights of shareholders or the disposition of corporate assets. Larry and Sally are the sole shareholders and each holds 150 shares. Larry and Sally are also the sole officers in the corporation and are two of the three directors in the corporation.

Several years later, Larry and Sally decide to expand the corporation’s operation, but to do so, they will need additional capital. Instead of borrowing money from a bank, they decide to cause the corporation to sell additional shares in the corporation. The corporation sells a total of 200 shares in 20 share blocks to 10 new individuals in a private stock offering. The new shares all have the same rights as the first 300 shares. The stock offering complies with all laws.

At a subsequent community event, Larry and Sally cause the corporation to donate \$10,000 (roughly one-tenth of the corporation’s cash reserves) to the Alaska Homeless Fund. They do this in their capacity as officers of the corporation and don’t seek director or shareholder approval.

1. Doug, one of the new shareholders, is outraged at the donation to the Alaska Homeless Fund. He invested in the “for profit” corporation to make money and sees the donation as contrary to the purpose for which the corporation was formed. He seeks your advice on whether the donation by Larry and Sally violates the Articles of Incorporation. What response do you give Doug?
2. Assume that the Articles were properly amended and the only change was to add an express requirement for shareholder approval for charitable donations. A special shareholders’ meeting is called to vote on whether the corporation should make the donation to the Alaska Homeless Fund. Assume there are no outstanding shareholder proxies. Discuss the level of shareholder participation and voting that must occur in order for the donation to be authorized by the shareholders’ vote.
3. The election of all three director seats will take place in one month and there are 4 individuals running for election. Some of the new shareholders want to make sure that their candidate, Mario, is elected to a seat on the board. They ask you for advice on how to best achieve this result. Discuss how they could vote their shares to ensure that Mario gets elected.
4. Explain whether the name of this corporation violates Alaska law.

GRADER'S GUIDE

QUESTION NO. 5

SUBJECT: BUSINESS LAW

1) Doug, one of the new shareholders, is outraged at the donation to the Alaska Homeless Fund. He invested in the “for profit” corporation to make money and sees the donation as contrary to the purpose for which the corporation was formed. He seeks your advice on whether the donation by Larry and Sally violates the Articles of Incorporation. What response do you give Doug? (30 points)

The articles are silent on shareholder voting and on disposition of corporate assets. Therefore, the actions by Larry and Sally would not violate any known article provision on whether they should have obtained a shareholder or director vote for the disposition of the \$10,000 to the charity. Doug's argument that the Corporation is a “for profit” corporation and that therefore a charitable donation is not within the allowable purposes of the corporation would fail. The articles do state that the purpose of the corporation is to develop real estate and “for any other lawful purpose”. Under AS 10.06.010(13), one of the lawful powers of a corporation is to “donate for the public welfare or for charitable, scientific, or educational purposes....” Therefore, the charitable donation would be a lawful exercise of the corporation's powers under its articles.

The facts state that the \$10,000 donation is only 1/10th of the corporation's cash reserves. Therefore, AS 10.06.568 and .570, which require a board resolution and 2/3 approval of outstanding shares when a corporation is disposing of all or substantially all of the corporation's assets, would not apply.

2) Assume that the Articles were properly amended and the only change was to add an express requirement for shareholder approval for charitable donations. A special shareholders' meeting is called to vote on whether the corporation should make the donation to the Alaska Homeless Fund. Assume there are no outstanding shareholder proxies. Discuss the level of shareholder participation and voting that must occur in order for the donation to be authorized by the shareholders' vote. (30 points)

Except for the given fact that shareholder approval is expressly required for charitable donations, the articles are otherwise silent on shareholder voting. AS 10.06.415 states that unless the articles of incorporation provide otherwise, “a majority of the shares entitled to vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders.” In answering the question, we can assume there are no outstanding proxies. With 500 outstanding shares, the minimum shares represented at the meeting must be a majority of these shares, or 251 shares represented in person at the shareholder meeting in order for there to be a quorum. No one shareholder holds 251 shares. Larry and Sally together hold 300 shares and could constitute a quorum. So at a minimum, two shareholders must

be present at this meeting. If either Sally or Larry were not present, then at least 6 of the remaining 10 shareholders would need to be present with Larry or Sally in order to have at least 251 shares represented.

AS 10.06.415 provides that if a quorum is present, “the affirmative vote of the majority of shares represented at the meeting and entitled to vote on the subject matter is the act of the shareholders, unless the vote of a greater number ... is required by this chapter, the articles of incorporation or the bylaws.” There are no facts to suggest that a higher vote is required. Therefore, the statutory presumption of majority vote would prevail. If the minimum number of shares were present to make a quorum (251 shares), then the charitable donation would be approved if 126 shares (the majority of 251 shares) approved it.

3) The election of all three director seats will take place in one month and there are 4 individuals running for election. Some of the new shareholders want to make sure that their candidate, Mario, is elected to a seat on the board. They ask you for advice on how to best achieve this result. Discuss how they could vote their shares to ensure that Mario gets elected. (30 points)

The only way that the new shareholders can guarantee the election of Mario to the board will be through use of cumulative voting. Under AS 10.06.420(d), unless the articles of incorporation provide otherwise, in the election for directors, “a shareholder has a right to vote or to cumulate votes by giving one candidate votes equal to the number of directors multiplied by the number of shares of the shareholder, or by distributing votes on the same principle among any number of candidates.”

A superior answer will apply cumulative voting principles to the facts of this question. In order to win a seat on the 3 member board of directors in a race with 4 candidates, Mario will need to receive 376 votes. You can determine this by multiplying the number of outstanding shares (500) times the number of director seats (3), then dividing by the number of candidates (4), and then adding one vote.

A shareholder that holds 20 shares would be allowed to cast 20 times 3 or 60 votes for a single candidate or among any number of candidates for the board. There are several ways for Mario to get 376 votes from the new shareholders, depending upon how many are aligned and joined in this effort. At a minimum, at least 7 of the 10 new shareholders are going to have to vote for Mario, using cumulative voting rights. Seven new shareholders would hold 60 votes a piece. Therefore, 6 of these 7 would need to cast all 60 of their votes in favor of Mario with the 7th shareholder voting at least 16 votes for Mario. Another approach would be to have each of 7 new shareholders voting 54 shares in favor of Mario or any other combination that would result in 376 votes for Mario.

4) Explain whether the name of this corporation violates Alaska law. (10 points)

The name of the corporation, "Anchorage Real Deal Co.", does not violate Alaska law. Under AS 10.06.105(a), a corporation must contain in its name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of those words. Although the word "Company" or its abbreviation "Co." may seem like a more generic business name rather than a typical reference for a corporation, it is allowed under Alaska statute as a corporate name designation.

In addition, under AS 10.06.105(b), while a corporate name may not contain the words "city", "borough", or "village" or otherwise imply it is a municipality, the actual name of a city, borough, or village may be contained in the name. So use of the name "Anchorage" in the title is proper.