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of experts ready to exercise their trained judgments on the multitude of complex problems constantly brought before them. Thus, assuming that there should be a separation of powers, the decision in the principal case seems to be desirable regardless of which interpretation is placed on it. Under the first interpretation the decision represents a stride toward separation; under the second, total separation is achieved.

JOHN R. INGLE

Corporations—Non-Profit Corporations Engaging in Commercial Enterprises

The doctrine of *ultra vires* in general corporation law has undergone considerable statutory revision in recent years.¹ The scope of this Note is to survey briefly the application of this doctrine to the narrower field of non-profit corporations, as such application appears in the comparative paucity of case law.

In the recent Georgia case of *Church of God of the Union Assembly v. Carmical*,² the defendant church, incorporated generally to promote the interests of religion, was engaging in the auction business in competition with plaintiff auctioneer. The court denied an injunction against the church's conducting the business, holding that the plaintiff lacked sufficient interest to complain about the alleged *ultra vires* act. The point was made that the court was conceding, not holding, that the business activity was *ultra vires*. While this case does not reach the question of whether a non-profit corporation may or may not operate a business for profit, it serves to point up the problem inherent in considering the powers which may be exercised by this class of corporate entities.

Generally speaking, the problem of whether to allow or enjoin business activity by a non-profit corporation has presented itself to the courts in three situations: (1) where such activity is expressly prohibited by the corporation's charter; (2) where it is not contemplated by the charter; and (3) where it is provided for in the charter, but such a provision is beyond statutory authorization.

In *State ex rel. v. Southern Junior College*,³ there was an express provision in the charter that the corporation should *not* possess the power to engage in any kind of trading operation. In an action brought by the state on relation of citizens engaged in the printing business, it was held that the prohibitory clause prevented the college from operating

¹ BALLANTINE, CORPORATIONS § 108 (Rev. ed. 1946). For a typical statement of the *ultra vires* rule as it is found in modern statutes, see N.C. GEN. STAT. § 55-18 (Supp. 1957).

² 104 S.E.2d 912 (Ga. 1958).

³ 166 Tenn. 535, 64 S.W.2d 9 (1933).

its printshop commercially, even though the profits derived from the operation were applied to the general educational purposes of the school.

An early Georgia case⁴ is illustrative of the second situation. The church there chartered a steamboat for an excursion to raise funds to pay off the indebtedness incurred in erecting a new church building. The defense of ultra vires was upheld against the church's suit to recover for the loss of profits resulting from the failure to make the trip. The court thought this activity was an attempt by the church to conduct a day's carrying business with the public, a venture not contemplated in the objects of association. However, a contrary result was reached by an Ohio court⁵ where the permitted business activity was selling particular merchandise to its members for a profit which was properly used to defray the non-profit corporation's expenses.

That a non-profit corporation cannot assure itself of the power to invade the business world by simply including that power in its charter is pointed out by the cases in the third category. On much the same facts presented by the *Southern Junior College* case, the Tennessee court two years later again enjoined a publishing enterprise by a non-profit corporation.⁶ But instead of prohibiting this activity, the charter in the latter case expressly authorized it. The court held that the operation did not come within the purview of any of the authorized objectives set out in the controlling statute,⁷ pointing to a statutory prohibition⁸ against such corporations engaging in trading operations. In *State ex rel. Dade County Kennel Club, Inc. v. State Racing Comm'n*,⁹ a kennel club organized for charitable and benevolent purposes was refused a permit to operate a racetrack, even though the power to build and operate greyhound racing tracks was expressly granted by the club's approved charter. The proposed act was declared contrary to the statute¹⁰ authorizing non-profit incorporation.

Apparently there are no North Carolina decisions in point. But there is no reason to believe that our court would hold differently from other courts; *i.e.*, when called upon in a proper proceeding, it would probably enjoin a corporation organized for non-profit purposes from engaging in purely commercial enterprises in competition with business

⁴ *Harriman v. First Bryan Baptist Church*, 63 Ga. 186 (1879).

⁵ *State ex rel. Bartlett v. National Ass'n of Angling and Casting Clubs*, 72 Ohio App. 319, 51 N.E.2d 662 (1943). *Accord*, *Emrick v. Pennsylvania R.R. YMCA*, 69 Ohio App. 353, 43 N.E.2d 733 (1942) (operating restaurant) and *Eads v. YWCA*, 325 Mo. 577, 29 S.W.2d 701 (1930) (renting building).

⁶ *State ex rel. v. Southern Publishing Ass'n*, 169 Tenn. 257, 84 S.W.2d 580 (1935). For a discussion of the power of religious, educational or charitable corporations to engage in business for profit, see Annot., 100 A.L.R. 579 (1936).

⁷ TENN. CODE ANN. § 48-1101 (1955).

⁸ TENN. CODE ANN. § 48-1109 (1955).

⁹ 116 Fla. 144, 156 So. 343 (1934).

¹⁰ FLA. STAT. ANN. § 617.01 (1956).

organizations or individuals. It seems worthy of comment, however, that an express prohibition against engaging in trading operations does not appear in our new Non-Profit Corporation Act.¹¹

The North Carolina act provides that non-profit corporations may be formed for any lawful purpose;¹² and in order to carry out the purposes stated in the charter, the power is given to "acquire, own, hold, improve, use and otherwise deal in and with, real or personal property."¹³ There is a general grant of all powers necessary or convenient to effect the corporation's purposes,¹⁴ plus freedom of charter amendment so long as the charter as amended contains only provisions lawful under the chapter.¹⁵ The authority to assert lack of power to act is given to the Attorney General in an action to dissolve the corporation or to enjoin it from transacting unauthorized business.¹⁶

In conclusion, it appears that the trend toward liberalization of the ultra vires doctrine as regards business corporations¹⁷ has been carried over to the non-profit field to a large extent. Perhaps excursions into the commercial world which are flagrant departures from the purposes of the corporation will continue to be enjoined; but, at the same time, it would seem to be growing easier to bring business operations within the protective veil of things incidental to the non-profit objectives stated in the charter. The business corporation and private merchant may well look with disfavor at the type of competition presented by these "non-profit" corporations.

HAROLD L. WATERS

Criminal Law—Forgery—Use of Fictitious Name

In *Hubsch v. United States*,¹ a recent decision from the Fifth Circuit, the defendant was indicted under the National Stolen Property Act² on

¹¹ N.C. GEN. STAT., ch. 55A (Supp. 1957). Although not specifically mentioned in the case, such a prohibition is set out in the Georgia statute under which the church in the principal case was incorporated. GA. CODE ANN. § 22-401 (1935).

¹² N.C. GEN. STAT. § 55A-5 (Supp. 1957).

¹³ N.C. GEN. STAT. § 55A-15(b)(1) (Supp. 1957).

¹⁴ N.C. GEN. STAT. § 55A-15(b)(8) (Supp. 1957).

¹⁵ N.C. GEN. STAT. § 55A-34 (Supp. 1957).

¹⁶ N.C. GEN. STAT. § 55A-17(3) (Supp. 1957).

¹⁷ BALLANTINE, *op. cit. supra* note 1.

¹ 256 F.2d 820 (5th Cir. 1958).

² 48 STAT. 794 (1934) (later codified as 18 U.S.C. §§ 2311, 2314-15 (1952 and Supp. IV 1957)). The portion of § 2314 under which defendant was indicted provides in pertinent part as follows:

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities, knowing the same to have been falsely made, forged, altered, or counterfeited [shall be punished].