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Nebraska Corporation Law, a Statutory Jungle

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Leading Articles

Nebraska Corporation Law, A Statutory Jungle

Roland A. Luedtke*

I. INTRODUCTION

Since passage of a General Corporation Law in Nebraska in 1941,¹ corporation filings have more than doubled.² During this time, the Secretary of State, chief administrator of Nebraska's corporation laws, has been called upon to make decisions concerning corporate administrative procedure. Some thirty-four Attorney Generals' opinions have been published on the subject.³ The Nebraska Bar has accepted much of this experience as standard administrative procedure in the field of Nebraska Corporation Law. However, several problems of interpretation remain to be answered. It is the purpose of this article to analyze some of the major problems of interpretation. It is hoped that this preliminary survey will indicate the need for a more comprehensive study of the entire field of corporation law in Nebraska by a committee of the Nebraska Bar Association.

A. THE GENERAL CORPORATION LAW OF 1941

Prior to 1941, Nebraska's corporation laws were considered "obsolete." Termed "sketchy and out of date,"⁴ the laws dated back to the Territorial days of 1866⁵ from which time they had been built piecemeal from legislative session to legislative session. As industry became more important to the overall economy of the state, interest was shown in revising the corporation laws of Ne-

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¹ Neb. Laws c. 41, p. 158 (1941).

² Sec. of State Biennial Rep. 5 (1956); Sec. of State Biennial Rep. 5 (1942).

³ Neb. Att'y Gen. Rep. 428 (1956).

⁴ Hearings before Judiciary Committee on L.B. 250, Neb. Legis., 55th Sess. (1941).

⁵ Neb. Terr. Rev. Stat. c. 25 (1866).

braska. ⁶ A study by a sub-committee of the Nebraska Bar Association ultimately resulted in the introduction and passage of what is now referred to as the "General Corporation Law of Nebraska."

1. *Source*

Nebraska's General Corporation Law of 1941 was modeled after the Delaware statutes which had been tested in practice and interpreted by the Delaware courts. ⁷ The Delaware Corporation Law in turn was modeled after the New Jersey Corporation Act of 1896, Delaware adopting its law in 1899. ⁸ Both Delaware and New Jersey decisions, therefore, are applicable to the new Nebraska law. ⁹

2. *Scope*

Those portions of the Delaware law relating to corporations not operating for profit were eliminated in the Nebraska model. ¹⁰ The purpose of the law was to enact "a general corporation law for Nebraska relating to corporations, foreign and domestic, organized for pecuniary profit." ¹¹ It was for this latter reason that the Delaware text was not followed literally. The provision of the Nebraska Constitution that "all stock shall have a face par value; and all stock in the same corporation shall be of equal par value"¹² further changed the content of the new Nebraska law.

B. ADOPTION OF GENERAL NONPROFIT CORPORATION LAW OF NEBRASKA, 1943

Since the 1941 act clearly dealt only with corporations organized for profit, it was not long before those interested in non-profit organizations urged enactment of legislation to clarify their position. Professor Vold of the University of Nebraska College of Law, had warned that the 1941 law "did not go far enough" and that "further work might have to be done at the next legislative

⁶ *Supra* note 4.

⁷ Ritchie, *Digest of Corporation Laws of Nebraska* 74 (1941); see *Del. Rev. Stat. c. 25* (1935).

⁸ 21 *Del. Laws c. 273* (1899); see *Chicago Corporation v. Munds*, 20 *Del. Ch. 142*, 172 *A. 452* (1934).

⁹ Ritchie, *Digest of Corporation Laws of Nebraska* 3 (1941).

¹⁰ *Ibid.*

¹¹ *Supra* note 4.

¹² *Neb. Const. art. 12, § 6.*

session.”¹³ When the 1941 General Corporation Law was passed, it “unwittingly changed the legal status” of many nonprofit corporations leaving them in the “uncertain” position that they had organized on a stock basis but without any right in the stockholders to receive dividends.¹⁴ The very statutes under which such nonprofit corporations originally filed were repealed in 1941 and no new statute enacted to provide for their continuation.¹⁵ In 1943, legislation dealing with future corporations without capital stock was enacted.¹⁶ There was no intent under this act “to open the door to the incorporation of new nonprofit corporations with capital stock.”¹⁷

C. AMENDMENTS TO CORPORATION LAWS SINCE 1941

The years which followed the adoption of the general corporation law proved the truth of Professor Vold's prediction that additional legislation would be needed.¹⁸ In the several regular sessions of the Nebraska Legislature since 1941, some thirty-one acts were adopted concerning this important subject matter.¹⁹

¹³ *Supra* note 4.

¹⁴ Minutes of Committee on Banking, Commerce and Insurance on L.B. 400, Neb. Legis., 56th Sess. (Mar. 16, 1943); Letter from William Ritchie to Committee on Banking, Commerce, and Insurance, Mar. 5, 1943, on file in Committee Records.

¹⁵ Neb. Laws, c. 41, p. 158 (1941).

¹⁶ Neb. Rev. Stat. § 21-1526 (Reissue 1954).

¹⁷ Letter from Robert K. Adams to Committee on Banking, Commerce, and Insurance, Mar. 17, 1943, on file in Committee Records.

¹⁸ *Supra* note 4.

¹⁹ Following are the Legislative Acts passed since 1941 affecting corporations in the State of Nebraska: Neb. Laws c. 50, p. 201 (1943); Neb. Laws c. 51, p. 202 (1943); Neb. Laws c. 52, p. 205 (1943); Neb. Laws c. 53, p. 206 (1943); Neb. Laws c. 54 p. 217 (1943); Neb. Laws c. 55, p. 220 (1943); Neb. Laws c. 39, p. 195 (1945); Neb. Laws c. 41, p. 197 (1945); Neb. Laws c. 55, p. 185 (1947); Neb. Laws c. 56, p. 188 (1947); Neb. Laws c. 57, p. 189 (1947); Neb. Laws c. 58, p. 190 (1947); Neb. Laws c. 118, p. 349 (1947); Neb. Laws c. 245, p. 768 (1947); Neb. Laws c. 2, p. 57 (1949); Neb. Laws c. 30, p. 114 (1949); Neb. Laws c. 31, p. 116 (1949); Neb. Laws c. 32, p. 124 (1949); Neb. Laws c. 33, p. 125 (1949); Neb. Laws c. 91, p. 241 (1949); Neb. Laws c. 38, p. 140 (1951); Neb. Laws c. 39, p. 143 (1951); Neb. Laws c. 40, p. 146 (1951); Neb. Laws c. 41, p. 147 (1951); Neb. Laws c. 44, p. 161 (1953); Neb. Laws c. 45, p. 164 (1953); Neb. Laws c. 46, p. 124 (1953); Neb. Laws c. 47, p. 171 (1953); Neb. Laws c. 62, p. 195 (1955); Neb. Laws c. 63, p. 199 (1955); Neb. Laws c. 286, p. 895 (1955).

In the first month of the 1957 legislative session, four more bills relating to corporations were introduced.²⁰

Most of the legislation affecting corporation laws since 1941 probably could be classified as making technical changes or effecting minor corrections. Several acts, however, were not so limited. Such exceptions include the General Nonprofit Corporation Law of 1943,²¹ the recodification of the Religious Associations laws of 1949,²² and the 1955 legislation providing means of reviving corporations dissolved for nonpayment of taxes.²³ The trend continues, however, and more and more corporate matters annually become the subject of proposed legislation.

II. PROCEDURAL MATTERS OF ADMINISTRATION

The volume and velocity of the legislation which creates, consolidates, alters or abolishes the corporate law of the state has left in its wake numerous problems. Confusion is intensified by frequent cross references within the various corporation statutes. Thus, the change of one section may carry latent ramifications into other portions of the corporation laws which have reference to the altered section. The administrative problems connected with corporation statutes are further complicated by the limitations on the discretion of the Secretary of State. Greater administrative discretion could help to resolve some of the problems which exist.

A. THE GENERAL CORPORATION LAW

1. Definitions

Only seven terms were defined in the General Corporation Law of 1941.²⁴ Administrative experience indicates a need for further clarification of some of the terms defined. For example, the terms "principal place of business" and "principal office" are used interchangeably. However, in practice this definition frequently confuses incorporators who consider their *principal office* at one site and the *principal place of business* at an entirely different geographical location. This only serves to point out the

²⁰ Following are listed the Legislative Bills introduced during the first month of the 68th Session of Nebraska Legislature (1957): L.B. 138, see Legislative Journal, p. 117; L.B. 259, see Legislative Journal, p. 182; L.B. 291, see Legislative Journal, p. 197; L.B. 529, see Legislative Journal, p. 304.

²¹ Neb. Rev. Stat. §§ 21-1523-29 (Reissue 1954).

²² Neb. Laws c. 31, p. 116 (1949).

²³ Neb. Laws c. 63, p. 199 (1955).

²⁴ Neb. Rev. Stat. § 21-101 (Reissue 1954).

fact that all definitions should be re-examined in the light of business usage and administrative experience since 1941. It is entirely possible that new definitions should be added in order that the law better be understood by all concerned.

2. *Filing Articles of Incorporation*

Since proper execution, filing and recording of Articles of Incorporation constitute a condition precedent to becoming a body corporate,²⁵ it is essential that these mechanical functions be observed meticulously. Errors in draftsmanship or execution only serve to delay the processing and cost both client and attorney unnecessary expense in time and money.

When articles of incorporation are received in the Office of Secretary of State, they are examined to determine whether certain essential statutory requirements as to form and content have been met. Some of the most common errors or omissions involve the following failures: (a) to name resident agent;²⁶ (b) to state minimum capital with which the corporation will start business;²⁷ (c) to comply with constitutional provision that all stock must have a par value and that each share of stock must be allowed a vote;²⁸ (d) to show place of residence of incorporators;²⁹ (e) to set forth whether private property of stockholders shall be subject to corporate debts;³⁰ (f) to show at least three directors;³¹ (g) to consider that offices of president and vice president cannot be filled by the same person;³² (h) to provide a clear and legible duplicate copy of the articles of incorporation for proper certification by the Secretary of State for recording in the County Clerk's office.³³ (i) to have articles signed by incorporators and duly acknowledged;³⁴ (j) to check proposed corporate name with names already on file in the Office of Secretary of State so that it

²⁵ Neb. Rev. Stat. §§ 21-107-09 (Reissue 1954).

²⁶ Neb. Rev. Stat. § 21-105(2) (Reissue 1954); although the statute does not require the street address of the resident agent, it is extremely important to obtain this as a matter of record for mailing purposes.

²⁷ Neb. Rev. Stat. § 21-105(7) (Reissue 1954).

²⁸ Neb. Const. art. 12, § 6.

²⁹ Neb. Rev. Stat. § 21-105(4) (Reissue 1954).

³⁰ Neb. Rev. Stat. § 21-105(6) (Reissue 1954).

³¹ Neb. Rev. Stat. § 21-111 (Reissue 1954).

³² Neb. Rev. Stat. § 21-116 (Reissue 1954).

³³ Neb. Rev. Stat. § 21-107 (Reissue 1954).

³⁴ *Ibid.*

can be distinguished on the records;³⁵ and (k) to include a proper statutory ending on the corporate name.³⁶

3. *Similarity of Corporate Name*

Selection of a corporate name similar to or the same as one already filed in the Office of Secretary of State poses a special problem in Nebraska, because the Secretary has very little discretion in the matter of accepting or refusing to file a given name. The only test is whether the name can be distinguished "upon the records in the office of the Secretary of State from the name of any other corporation organized under the laws of this state."³⁷ If the name can be distinguished in any manner, under present administrative practice, it must be filed.

Statutory restriction on similarity of names is based upon the Delaware law as amended in 1929. Delaware law previously provided that a corporation in selecting its name should choose one that "shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes."³⁸ According to the amended version of the Delaware law, the sole statutory test or standard on the question of names of rival domestic corporations is distinguishing them on the records in the office of Secretary of State. The only remedy available to a corporation adversely affected is to maintain an action on the basis of unfair competition.³⁹ Since the present Nebraska law takes this form, the same applies here.⁴⁰

4. *Election of Directors and Officers*

Annual corporation reports required by statute⁴¹ frequently fail to supply complete information as to the number of directors or their names and post office addresses. There must be at least three directors⁴² and there is a specific restriction that one person may

³⁵ Neb. Rev. Stat. § 21-105(1) (Reissue 1954).

³⁶ *Ibid.*

³⁷ *Supra* note 35.

³⁸ Letter from Ralph Nelson, Ass't Att'y Gen. to Frank Marsh, Sec. of State, Jan. 22, 1954, on file in office of Sec. of State.

³⁹ *Standard Oilshares v. Standard Oil Group*, 17 Del. Ch. 113, 150 Atl. 174 (1930).

⁴⁰ See note 27 *supra*; see also Nims, 1 *Unfair Competition and Trade Marks* 244 (1947).

⁴¹ Neb. Rev. Stat. §§ 21-302, 304 (Reissue 1954).

⁴² Neb. Rev. Stat. § 21-111 (Reissue 1954).

not hold both the office of president and vice president.⁴³ Since such reports are the only existing public records of some very vital information concerning the officers of these corporations, the accuracy and completeness of these documents cannot be stressed too strongly.

5. *Proper Certification of Amendments*

As the number of incorporations increases, there is a corresponding increase in number of amendments and other related documents filed in the office of Secretary of State. This focuses attention on the formalities involved in completing such reports. The statutory requirements are quite specific on the subject. A very important step often overlooked is the preparation of the certification which must be signed and sealed under the signatures of both the president and vice president of the corporation.⁴⁴ The law further provides that either the vice president or the assistant secretary may sign for the president or secretary, respectively.⁴⁵ Acknowledgment of this document by the president or vice president is necessary to complete the procedure.⁴⁶ Failure to complete these formal requirements may leave serious doubt as to the legal sufficiency of the filing.

6. *Reduction of Capital*

Nebraska statutes provide for a very simple means of reducing capital.⁴⁷ However, failure to follow statutory requirements explicitly when such reduction is made just prior to the time the annual report is filed⁴⁸ present a constantly recurring problem. Unless the capital reduction is made prior to January 1 of the year occupation taxes become due and assessable, the Secretary of State is compelled to collect an occupation tax based upon the amount of capital stock before reduction. The last annual report on file is the basis for computing this tax.⁴⁹

7. *Stockholders' Right of Inquiry*

Prior to enactment of the General Corporation Law of 1941, Nebraska corporations had to publish notice of indebtedness so

⁴³ Neb. Rev. Stat. § 21-116 (Reissue 1954).

⁴⁴ Neb. Rev. Stat. § 21-151 (Reissue 1954).

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Neb. Rev. Stat. § 21-158 (Reissue 1954).

⁴⁸ Neb. Rev. Stat. §§ 21-302, 304 (Reissue 1954).

⁴⁹ Neb. Rev. Stat. § 21-303 (Supp. 1955).

that the general public would have some idea as to the financial status of the individual corporation.⁵⁰ The only person testifying against the 1941 law objected to the elimination of this financial report.⁵¹

Nebraska did not strictly follow Delaware's law which provided that the original or duplicate stock ledger containing the names and addresses of stockholders shall at all times be open to the examination of every stockholder.⁵² It was felt more desirable to avoid possible abuses growing out of making stockholders lists available to anyone at any time. It was feared particularly that "such abuses would bring on vexatious litigation and the granting of information to persons hostile to the best interest of the corporation."⁵³

Nebraska's law does not require submission by corporation officers of a financial statement or profit and loss statement upon the demand of the stockholder.⁵⁴ It is submitted that statutes should never go farther than absolutely necessary in restricting the stockholders' right of inquiry and inspection of the books. It is admitted that such information could lead to abuse; however, adequate safeguards could be written into any legislation permitting stockholders better access to corporation records.

8. *False Reports by Directors or Officers*

One positive protection afforded stockholders under Nebraska law makes directors or officers of a corporation liable for any loss as a result of knowingly causing false reports as to the status of the corporation.⁵⁵ Such an act must be done "knowingly" and the falsity of the written statement must be proved to be "material."⁵⁶ It would seem that this statute is weak and of very little practical use. This is evidenced by the fact that the way to escape its effect would be to refuse to give out any written reports to stockholders concerning affairs of the corporation. Since officers are not required to furnish such financial reports even at the stockholders' request, anyone seeking to determine the true status of such an organization could be easily frustrated.

⁵⁰ Neb. Cum. Stat. § 24-213 (1929).

⁵¹ Hearings before Judiciary Committee on L.B. 250, Neb. Legis., 55th Sess. (1941).

⁵² Ritchie, Digest of Corporation Laws of Nebraska 39 (1941).

⁵³ *Ibid.*

⁵⁴ See Rutledge, Significant Trends in Modern Incorporation Statutes, 22 Wash. U.L.Q. 305, 332-3, n. 122, 123 (1937).

⁵⁵ Neb. Rev. Stat. § 21-181 (Reissue 1954).

⁵⁶ *Ibid.*

9. *Inconsistent Provisions re Filing Formalities*

The section of the General Corporation Law dealing with the procedural formality of dissolving a corporation by resolution upon consent of the stockholders raises a common question applicable to the filing of many other corporate documents.⁵⁷ The question concerns a certain thread of uncertainty running throughout all corporation laws as to whether signatures of parties to an agreement, consent, etc. must be duly notarized, witnessed or acknowledged, as the case might be. Some definitely require formal acknowledgment⁵⁸ while others, such as the dissolution statute mentioned above, remain silent. Any future study should include recommendations concerning laws which would make more consistent the formal requirements as to signatures by directors, officers or stockholders. When stockholders are consenting to the actual dissolution of a corporation, it is submitted it would be well to insist that such written consent be duly acknowledged. Certainly the instrument which dissolves an organization should be signed with the same dignity as that which created it.⁵⁹

A collateral problem here involved relates to the publication of every filing of articles of incorporation, amendment, change and dissolution. While publication is required,⁶⁰ and the statutes refer to "proof of publication" there are no provisions for the manner in which the proof is to be made, nor is there a definite time set when such proof must be returned. The status of corporations failing to complete publication is in doubt.

10. *Matters Involving Voluntary Dissolution*

A matter frequently overlooked by persons voluntarily dissolving a corporation is the payment of all occupation taxes due or assessable.⁶¹ A corporation cannot be dissolved until such taxes are paid.⁶² It is particularly important that attorneys preparing to dissolve a corporation advise their clients to pay these taxes prior to January 1 of the year in which they desire to effect the dissolution.⁶³ If these taxes are not paid by January 1 of a given

⁵⁷ Neb. Rev. Stat. § 21-183 (Reissue 1954).

⁵⁸ Neb. Rev. Stat. § 21-151 (Reissue 1954).

⁵⁹ Neb. Rev. Stat. § 21-107 (Reissue 1954).

⁶⁰ Neb. Rev. Stat. § 21-1,147 (Reissue 1954).

⁶¹ *Supra* note 57.

⁶² Neb. Rev. Stat. § 21-185 (Reissue 1954).

⁶³ Neb. Rev. Stat. §§ 21-303-04 (Reissue 1954).

year, occupation taxes must be paid for the entire year even though dissolution is completed during the first week of January. It should be noted that some attorneys file voluntary dissolutions under Article 3,⁶⁴ contending that it is unnecessary to file a separate consent statement when the articles of incorporation specify procedure for dissolution and all parties concerned are satisfied.

11. Recent Legislative Alterations

Before leaving the General Corporation Law, three recent legislative enactments should be touched upon. The tax exemption status of domesticated foreign corporations was upset and resolved in 1953. Administrative practice of long standing made no distinction in tax exemption privileges between foreign corporations domesticated in Nebraska and those corporations which originated under the laws of this state.⁶⁵ (Note that a domesticated corporation is one which has given up its foreign charter and has agreed to be bound by the laws of Nebraska, not merely a foreign corporation which has qualified to do business here while retaining its foreign charter.) This view of the tax status of domesticated corporations was held incorrect in *Omaha National Bank v. Jensen*,⁶⁶ in 1953, but legislation that same year reinstated the previous administrative practice.⁶⁷ Also in 1953, any doubts which had existed about the authority of private corporations to contribute to charity was dispelled when broad authority was specifically set out by statute.⁶⁸ The third recent change eliminated an unnecessary restriction on the revival of corporations dissolved for nonpayment of franchise taxes.⁶⁹ Prior to the 1955 change, such revival could not be accomplished more than two years after dissolution, but the time restriction was eliminated.⁷⁰

B. NONPROFIT CORPORATION WITHOUT CAPITAL STOCK

Article 15, of Chapter 21 of the Revised Statutes of Nebraska, illustrates one of the practical problems in administering and interpreting Nebraska corporation laws. The article represents an

⁶⁴ Neb. Rev. Stat. § 21-322 (Reissue 1954).

⁶⁵ *Omaha Nat'l Bank v. Jensen*, 157 Neb. 22, 58 N.W.2d 582 (1953).

⁶⁶ *Ibid.*

⁶⁷ Neb. Laws c. 267, § 1 (1953).

⁶⁸ Neb. Laws c. 47, § 1 (1953); See Neb. Rev. Stat. § 21-1,165 (Reissue 1954).

⁶⁹ Neb. Laws c. 63, p. 199 (1955).

⁷⁰ Neb. Rev. Stat. § 21-1,130 (Reissue 1954) shows the old requirement.

attempt to bring together three legislative acts because they all concern corporations not organized for profit. But each of the acts involved is separate and distinct both as to time of enactment and as to purpose. They are as follows:

1. *The 1929 Nonprofit Corporation Act*

The first legislative act dates back to 1929⁷¹ and today makes up the first eight sections of Article 15.⁷² The purpose of forming such corporations appears to be extremely limited and is specifically set out by statute.⁷³ It seems clear that unless corporations qualify under these sections they do not fulfill the requirements of the 1929 act.

Closer examination of this 1929 act further indicates that the provision for election of trustees or directors is permissive only.⁷⁴ It is recommended that a definite number of trustees or directors should always be specified in the statute and that such a provision be made mandatory as well as consistent throughout all Nebraska corporation laws.

Another section in the 1929 act⁷⁵ provides for publication of notice of incorporation. It should be noted that although the mandatory notice is required to be published for four weeks, the statute once again is silent as to exact time or procedure required to publish. It is within the realm of probability that a publication for four weeks made many years after articles of incorporation were filed might satisfy the statute as it is written. Since no specific time for filing a proof of publication is provided,⁷⁶ it leaves a serious question about all incorporations made under this act.

2. *Hospital Service Corporations*

Some thirteen sections of the article concern hospital service corporations.⁷⁷ This is a corporation defined by statute⁷⁸ as a result of a 1941 legislative act.⁷⁹ Although the articles of incorporation

⁷¹ Neb. Laws c. 56, p. 219 (1929).

⁷² Neb. Rev. Stat. §§ 21-1501-08 (Reissue 1954).

⁷³ Neb. Rev. Stat. § 21-1501 (Reissue 1954).

⁷⁴ Neb. Rev. Stat. § 21-1505 (Reissue 1954).

⁷⁵ Neb. Rev. Stat. § 21-1507 (Reissue 1954).

⁷⁶ Neb. Rev. Stat. § 21-1,147 (Reissue 1954).

⁷⁷ Neb. Rev. Stat. §§ 21-1509-21 (Reissue 1954).

⁷⁸ Neb. Rev. Stat. § 21-1509 (Reissue 1954).

⁷⁹ Neb. Laws c. 43, p. 229 (1941).

are formally filed with the Secretary of State, such filing is not actually made until the articles, or amendments, as the case may be, are approved by the Department of Insurance.⁸⁰ All annual statements,⁸¹ visitations and investigations⁸² are under the direction of what is referred to as "the department."⁸³ It is assumed that "department" here refers to the Department of Insurance. It is submitted that such a law either should be placed in the statutes under a separate article or made part of the Insurance Laws.

3. *The General Nonprofit Corporation Law of Nebraska*

The last seven sections of article 15⁸⁴ were adopted in 1943⁸⁵ to clarify the status of nonprofit corporations after the adoption of the General Corporation Law of 1941. The important thing to note here is that with the exception of references to boards of directors, etc.,⁸⁶ the provisions of the General Corporation Law are applicable to nonprofit corporations. It also seems clear, according to the history of this later act, and the definitions set out in the law itself,⁸⁷ that only organizations not organized for profit can qualify under this act.

One of the most distressing administrative problems regarding the General Nonprofit Corporation Law is the fact that although it clearly applies to nonprofit corporations without capital stock, the reference back to the general corporation laws involves specific mention of stockholders. For example, if an association was organized pursuant to the general nonprofit corporation laws and desired to voluntarily dissolve, the general corporation law seems to be applicable.⁸⁸ However, the section of the general corporation law setting out procedure for voluntary dissolution requires either "consent of a majority in interest of the stockholders" by a two-thirds majority vote, or consent in writing by all of the stockholders duly signed and filed in the Office of Secretary of State.

⁸⁰ Neb. Rev. Stat. § 21-1510 (Reissue 1954).

⁸¹ Neb. Rev. Stat. § 21-1515 (Reissue 1954).

⁸² Neb. Rev. Stat. § 21-1516 (Reissue 1954).

⁸³ Neb. Rev. Stat. §§ 21-1512-17 (Reissue 1954).

⁸⁴ Neb. Rev. Stat. §§ 21-1523-29 (Reissue 1954).

⁸⁵ Neb. Laws c. 55, p. 220 (1943).

⁸⁶ Neb. Rev. Stat. §§ 21-111-15 (Reissue 1954).

⁸⁷ Neb. Rev. Stat. § 21-1523 (Reissue 1954).

⁸⁸ Neb. Rev. Stat. § 21-183 (Reissue 1954).

Since there are no stockholders in the association, it becomes impossible to comply with the only dissolution statute applicable. For this reason, it seems necessary to correct this situation by providing specific procedures for dissolution as applied to a nonprofit corporation without capital stock. Present practice of the Secretary of State under the circumstances outlined is to accept a consent statement signed by all of the members of such an association and a certificate of dissolution is issued for whatever it is worth.

C. FOREIGN CORPORATIONS

Since 1909⁸⁹ all corporations organized under the laws of any foreign government or any state other than Nebraska, including the District of Columbia,⁹⁰ have been required to appoint a resident agent and file the necessary certificate provided they are actually doing business in Nebraska.⁹¹ Whether such a foreign corporation is actually "doing business" in Nebraska becomes the critical test.

1. *What Constitutes "Doing Business" in Nebraska*

There seems to be no definite or precise rule in Nebraska as to what constitutes "doing business" so as to require foreign corporations to become qualified. Each case accordingly must be decided on its own facts and its own merits.⁹² It is fairly well established that an isolated or single sale of goods, transaction or contract between a foreign corporation and a citizen of Nebraska does not constitute "doing business" within the meaning of the law.⁹³

It is submitted that foreign corporations should be required to be qualified to do business in order to accept a bid on government jobs or contracts in Nebraska. It would also be recommended that the investigative powers of the Secretary of State to determine whether foreign corporations actually are doing business, be increased. The only investigative power now held by the Secretary of State applies to foreign corporations already qualified.⁹⁴

⁸⁹ Neb. Laws c. 28, p. 206 (1909).

⁹⁰ Neb. Rev. Stat. § 21-1202 (Reissue 1954).

⁹¹ Neb. Rev. Stat. § 21-1201 (Supp. 1955).

⁹² *St. Louis S.W. Ry. Co. v. Alexander*, 227 U.S. 218; *Village of Axtell v. Nebraska Mutual Ins. Co.*, 142 Neb. 657, 7 N.W.2d 471 (1943); 21 Neb. L. Rev. 164 (1941).

⁹³ *Pitzer v. Stifel, Nicolaus & Co.*, 143 Neb. 394, 9 N.W.2d 495 (1943).

⁹⁴ Neb. Rev. Stat. § 21-306 (Supp. 1955).

2. *Enforcement of Contracts*

Another problem concerns the enforcement of contracts entered into within the state of Nebraska by foreign corporations not qualified to do business. Since many citizens of Nebraska negotiate and execute such contracts with foreign corporations, it would seem wise to set up legislative safeguards which would either deny the right to enforce such contracts or stipulate conditions with which compliance must first be effected before the state's courts may be employed to enforce such contracts.

That Nebraska needs legislation with respect to enforcement of local contracts by foreign corporations not qualified to do business, is evidenced by the fact that Nebraska cases are not constant.⁹⁵

Missouri requires that a foreign corporation be qualified to do business before it can maintain any suit or action, either legal or equitable, in any courts of the state, upon any demand, whether arising out of contract or tort.⁹⁶ The effect of such a statute is shown in a Missouri case involving a Nebraska corporation.⁹⁷ In this case the Nebraska corporation, a manufacturer of advertising signs, entered into a contract to erect and maintain advertising signs in Missouri which signs were leased to a Missouri corporation on a monthly rental basis. Title to the signs was retained by the Nebraska company and a controversy subsequently arose as to whether the signs were maintained properly. The Missouri company did not pay the rentals and the Nebraska corporation instituted suit in Missouri to collect them. The court held in effect that the Nebraska corporation could not sue. Moreover, a counterclaim by the Missouri company for damages due to alleged improper maintenance of the signs was remanded for trial on its merits. The penalty paid by the Nebraska corporation for failing to qualify under the Missouri law was twofold: (1) it could not sue on its claim and (2) it could be held liable on a counterclaim.⁹⁸

⁹⁵ *North West Ready Roofing Co. v. Antes*, 117 Neb. 121, 219 N.W. 848 (1928) (seems to have permitted an unqualified foreign corporation to sue); cf. *Refrigeration & Air Conditioning Institute v. Hilyard*, 146 Neb. 42, 18 N.W.2d 548 (1945) (denied the foreign corporation the right to maintain suit. The Court in the latter case stated that a corporation has no right except by comity to carry on business in a foreign state unless it complies with domestication statutes of that state.)

⁹⁶ Rev. Stat. Mo. §§ 351.570, 351.635 (1949).

⁹⁷ *Western Outdoor Advertising Co. of Nebraska v. Berbiglia*, 263 S.W.2d 205 (Mo. 1953).

⁹⁸ *Hutterian Brethern of Wolf Creek v. Haas*, 116 F. Supp. 37 (D.C. Mont. 1953).

3. *Statutory Service of Process Upon Secretary of State*

Service of process or other legal notice may be served on the Secretary of State as well as on the duly appointed resident agent of a foreign corporation authorized to do business in the state of Nebraska.⁹⁹ Such service on the Secretary of State was made more liberal in 1955 by providing that the Secretary of State may designate in writing certain persons employed in his office upon whom process may be served when the Secretary of State is for any reason absent from his office in the State Capitol Building in Lincoln.¹⁰⁰ Prior to this legislation, the statute was interpreted by the Attorney General to mean that where service of process must be made upon a named public official, such "constructive or substituted service must be strictly construed."¹⁰¹

The 1955 Act further provides for obtaining specific information as to the address of the foreign corporation sought to be served. This must include the name of the city, and, if of record, the street address of the corporation or its resident agent for purposes of notification. Unless complete information is made available to the Secretary of State, it is virtually impossible to carry out the intent of the law.¹⁰² Prior to 1955, no fee was charged for this foreign corporation statutory service on the Secretary of State. The 1955 law established the statutory fee of \$3.00 for this service which is the same as for service in the case of domestic corporations.¹⁰³

Quaere whether such substituted service of summons on the Secretary of State is valid when the foreign corporation involved has failed to qualify in Nebraska? The Nebraska Supreme Court has not yet ruled on the question. However, since many services of process are filed under such circumstances in Nebraska, the matter undoubtedly will be the subject of future challenge. The specific wording of the statute indicates that only foreign cor-

⁹⁹ Neb. Rev. Stat. § 21-1201 (Supp. 1955).

¹⁰⁰ Neb. Laws c. 62, § 2 (1955).

¹⁰¹ Neb. Att'y Gen. Rep. 279 (1944).

¹⁰² Luedtke, *Statutory Service of Process upon Secretary of State; Important Changes Resulting from 1955 Legislative Action*, 4 Neb. Bar J. 131 (Oct. 1955).

¹⁰³ Neb. Rev. Stat. § 21-192 (Supp. 1955).

porations *previously qualified* are affected.¹⁰⁴ There seems to be little reason why Nebraska should limit itself to such restrictions. It is clear that with proper notification, jurisdiction can be further extended over foreign corporations on behalf of resident plaintiffs, without running afoul of due process requirements.¹⁰⁵ A number of other states are more extensive in the exercise of this power by means of service through the Secretary of State¹⁰⁶ or otherwise.¹⁰⁷

D. COOPERATIVE COMPANIES

Cooperative corporations in the State of Nebraska must be organized either under Article 13 or Article 14 of Chapter 21, and organization under either Article has been interpreted to fall under the nonprofit corporation category despite the fact that capital stock and dividends are frequently involved.¹⁰⁸

1. *General provisions*

General provisions make it mandatory that the word "cooperative" be included in the corporate name¹⁰⁹ and no other corporation, company, firm or association may use the word "cooperative" or any abbreviation thereof as part of its name.¹¹⁰

One of the confusing aspects of laws relating to cooperative corporations is that fees, reports, filings, etc. are required to be handled "the same as those required by law of other corpora-

¹⁰⁴ Neb. Rev. Stat. § 21-1201 (Supp. 1955). The statute requires all foreign corporations (excepting certain insurance businesses and common carriers) to make certain filings with the Secretary of State "before it shall be authorized to engage in any kind of business in this state." Service procedures proceed upon the filings made. Penalties are provided for violation of the filing and appointment of agent requirements in subsection (3) of the statute.

¹⁰⁵ *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945).

¹⁰⁶ E.g. *Electrical Equipment Co. v. Hamm*, 217 F.2d 656 (8th cir. 1954). (Iowa service on unlicensed foreign corporation held valid); *Shippers Pre-Cooling Service v. Macks*, 181 F.2d 510 (5th cir. 1950) *cert. denied*, 340 U.S. 816 (1950) (Alabama service on unlicensed foreign corporation through Secretary of State as presumed agent for service held not violative of due process see Ala. Code tit. 7, § 193 (1940).) *Clay v. Kent Oil Co.*, 72 S.D. 629, 38 N.W. 2d 258 (1949); *Lunceford v. Commercial Travelers Mut. Acc. Ass'n*, 190 N.C. 314, 129 S.E. 805 (1925).

¹⁰⁷ Utah provides for service by publication under certain circumstances. Utah Code Ann. §§ 104-5-12 (1943).

¹⁰⁸ Letter from Robert A. Nelson, Ass't Att'y Gen. to Frank Marsh, Sec. of State, July 23, 1942, on file in office of Sec. of State.

¹⁰⁹ Neb. Rev. Stat. § 21-1302(1) (Reissue 1954).

¹¹⁰ Neb. Rev. Stat. § 21-1306 (Reissue 1954).

tions."¹¹¹ It is submitted that this language is extremely ambiguous and needs clarification. The Secretary of State's long standing administrative interpretation has been that all such cooperatives are to be treated as nonprofit corporations.¹¹²

2. *Cooperative Credit Associations*

The act dealing with Cooperative Credit Associations was passed in 1919.¹¹³ It is another example of an act administered by the Department of Banking¹¹⁴ and over which the Secretary of State has no jurisdiction. The original Articles of Incorporation must be approved and filed in the Department of Banking with the duplicate on file with the County Clerk in the county of the principal place of business of the association.¹¹⁵ Annual reports and fees are handled by the Department of Banking.¹¹⁶ It seems that in the interest of uniformity either this type of corporation should be on file in the Office of Secretary of State or statutes relating thereto should appear exclusively under the laws dealing with Banks and Banking.¹¹⁷ Other inconsistencies include a much more severe name restriction¹¹⁸ not enjoyed by corporations in general and the right to dissolve without any formal filing of dissolution.¹¹⁹

3. *Cooperative Land Companies*

Cooperative Land Companies,¹²⁰ which may or may not have capital stock,¹²¹ present an ambiguity by referring to "*adoption of articles of incorporation in the same manner and with like powers and duties as other corporations.*"¹²² (emphasis added.) But what other corporations? Clarification of this reference is essential to consistent administration of the law.

¹¹¹ Neb. Rev. Stat. § 21-1305 (Reissue 1954).

¹¹² Letter from Richard H. Williams, Ass't Att'y Gen. to Frank Marsh, Sec. of State, Apr. 14, 1955, on file in office of Sec. of State.

¹¹³ Neb. Laws c. 198, p. 882 (1919).

¹¹⁴ Neb. Rev. Stat. § 21-1309 (Reissue 1954).

¹¹⁵ Neb. Rev. Stat. § 21-1313 (Reissue 1954).

¹¹⁶ Neb. Rev. Stat. § 21-1329 (Reissue 1954).

¹¹⁷ Neb. Rev. Stat. Chapter 8 (Reissue 1954).

¹¹⁸ Neb. Rev. Stat. § 21-1311 (Reissue 1954).

¹¹⁹ Neb. Rev. Stat. § 21-1331 (Reissue 1954).

¹²⁰ Neb. Rev. Stat. §§ 21-1333-39 (Reissue 1954).

¹²¹ Neb. Rev. Stat. § 21-1333 (Reissue 1954).

¹²² *Ibid.*

4. *Nonstock Cooperative Marketing Companies*

The Nonstock Cooperative Marketing Act of 1925¹²³ constitutes a separate Article of Chapter 21¹²⁴ and concerns corporations organized for the specific purpose of producing agricultural products and activities related thereto.¹²⁵ The act does not specify where articles of incorporation are to be filed except that it is to be done "in accordance with the general corporation laws" of the State of Nebraska.¹²⁶ This vague reference back to "the general corporation laws . . . and all powers and rights thereunder . . ."¹²⁷ is repeated under a section setting out what laws shall apply.

It is obvious that the 1941 General Corporation Law cannot apply since the act to be considered was passed in 1925 and has not been amended. We are then referred back to corporation laws in general in 1925, presenting a most difficult task of administration. The remedy is the same as suggested with reference to Cooperative Land Companies above, namely, general review for purposes of clarification.

E. OCCUPATION TAX

Article 3 of Chapter 21 deals with the occupation tax or fee assessed against all types of corporations at the time annual reports are submitted to the Secretary of State.¹²⁸ The principal problem relates to the nature of the tax or fee itself.

1. *Nature of the Tax*

There has been much discussion concerning whether the fee charged corporations at the time of submitting the annual report is a franchise tax or merely a fee to defray the expenses of processing corporation filings, annual reports, etc. The Attorney General is of the opinion that the fee is "a tax and is not in the nature of a license or fee for the right to do business."¹²⁹ The statute is considered to be "a revenue producing measure and one which does not aim, immediately or remotely, at regulation or supervision of

¹²³ Neb. Laws c. 80, p. 247 (1925).

¹²⁴ Neb. Rev. Stat. §§ 21-1401-14 (Reissue 1954).

¹²⁵ Neb. Rev. Stat. § 21-1402 (Reissue 1954).

¹²⁶ Neb. Rev. Stat. § 21-1404 (Reissue 1954).

¹²⁷ Neb. Rev. Stat. § 21-1414 (Reissue 1954).

¹²⁸ Neb. Rev. Stat. §§ 21-303, 306 (Supp. 1955).

¹²⁹ Letter from Robert A. Nelson, Ass't Att'y Gen. to Frank Marsh, Sec. of State, June 21, 1941, on file in office of Sec. of State.

the corporations paying the tax."¹³⁰ These opinions are supported by the Nebraska Supreme Court which in discussing such a tax said that:

This tax, which the state seeks to impose, is in its nature a franchise or excise tax. It is not a tax upon the property of the corporation. Neither is it a tax upon its capital stock, nor a tax upon the business of the corporation. The state of Nebraska gave the plaintiff corporate life and permits it to live. Its powers are derived from the laws of the state. The amount and the manner of the issue of its stock, the liability of the holders thereof, and all other incidents in the creation, the growth and the development of this corporation, are all powers and privileges conferred upon it by the state. For all of these corporate benefits and advantages, the state seeks to levy a tax as the price of its corporate existence. If the corporation accepts the boon of corporate existence, it may well bear the burden. A state may tax a domestic corporation a franchise tax as it sees fit, and prescribe any mode of measurement for the fee it finds convenient. It may require the payment of a fee as a condition precedent to the granting of a charter to do business, and an annual fee each year for its continued existence of rights and privileges of the franchise.¹³¹

It is generally accepted that where a statute provides that a person or corporation engaged in a particular kind of business shall be subject to regulation, supervision and inspection in the interests of the public and an obligation is imposed to obtain and pay for a license to engage in that business and to pay fees assessed annually to defray the cost of regulation, that the legislature in enacting such a law has been concerned not with an exercise of the power to tax nor with public revenues. Rather such obligations are an exercise of the power to police certain businesses and to protect against fraud, deceit or extortionate practices.¹³² The Nebraska Legislature, nevertheless, refused to increase occupation tax rates in 1947 on the grounds that "this fee was not intended as a source of revenue."¹³³

When corporations fall into the category of such policed industries and businesses and make annual reports as well as pay

¹³⁰ Neb. Att'y Gen. Rep. 982 (1950).

¹³¹ *State ex rel. Beatrice Creamery Co. v. Marsh*, 119 Neb. 197, 198, 227 N.W. 926, 927 (1929).

¹³² *State ex rel. School Dist. v. Boyd*, 63 Neb. 329, 39 N.W. 417 (1902); *State ex rel. Wyatt v. Ashbrook*, 154 Mo. 375, 55 S.W. 627 (1900); *Littlefield v. State*, 42 Neb. 223, 60 N.W. 724 (1894); see 33 Am. Jur., Licenses § 19 (1941); 51 Am. Jur., Taxation §§ 13, 68, 70 (1944).

¹³³ Neb. Laws c. 55 p. 185; Statement of Committee on Banking, Commerce and Insurance on L.B. 185, Neb. Legis., 60th Sess.

occupation fees, exemption from occupation taxes is provided.¹³⁴ This is the case with all banking, insurance, and building and loan corporations.¹³⁵ The exemption has been expanded to include industrial loan and investment companies and trust companies because they make reports and pay fees to the Department of Banking.¹³⁶

The occupation fee is assessed against both domestic¹³⁷ and foreign corporations qualified to do business in Nebraska.¹³⁸ Occupation tax of a foreign corporation is computed upon the basis of paid-up capital stock employed in this state, the formula of which is set out specifically in the statute itself.¹³⁹

One of the most difficult administrative decisions concerns foreign corporations alleged to be engaged exclusively in interstate commerce. Acting upon a 1953 opinion of the Attorney General,¹⁴⁰ the Secretary of State has followed the practice of not imposing the occupation tax upon foreign corporations submitting proof that they are engaged exclusively in interstate commerce. Once again the administrative problem stems from the failure of the law to provide some specific means of investigation by the Secretary of State when such a foreign corporation does submit its claim of exemption on grounds of interstate commerce. The law should be strengthened in this respect.

2. *Common Errors and Omission in Annual Reports*

The most common error or omission in submitting annual reports by domestic, domesticated and foreign corporations is the failure to include names and addresses of all directors and officers of the corporation. The inclusion of the latest location of the principal office and directions for addressing mail frequently is omitted. Many times the affidavit is incomplete, the corporate name is incorrect or the notarial seal is missing. Many fail to check the computation of the fee carefully and miss the penalty. If these items are not examined properly before the report is sent to the Secretary of State, it only means duplicated effort when the report is returned for correction.

¹³⁴ Neb. Rev. Stat. § 21-321 (Reissue 1954).

¹³⁵ Neb. Rev. Stat. §§ 8-409, 223, 601 (Reissue 1954).

¹³⁶ Neb. Att'y Gen. Rep. 717 (1950).

¹³⁷ Neb. Rev. Stat. §§ 21-303, 309 (Supp. 1955).

¹³⁸ Neb. Rev. Stat. § 21-306 (Supp. 1955).

¹³⁹ State ex rel. J. I. Case Threshing Machine Co. v. Marsh, 117 Neb. 832, 223 N.W. 126 (1929).

¹⁴⁰ Neb. Att'y Gen. Rep. 319 (1954).

3. *Penalty Remission*

Nebraska statutes provide that upon showing of cause, the Governor, Secretary of State and Attorney General may remit penalties prescribed.¹⁴¹ It might be well to note that although this penalty remission statute has not been used for at least four years, there is occasionally a request to use it. It is submitted that certain conditions or circumstances such as an act of God or some unforeseen emergency making compliance absolutely impossible might make the remission board necessary. However, it would seem advisable to reword the statute so that discretion would be restricted to the point that it would preclude abuse by way of political pressure. A corporation should not be excused from paying a penalty merely because it was able to convince two of three executive officers of the State of Nebraska that it had cause for failure to comply.

4. *Permissive Filing of Tax Lien by Secretary of State*

When the fees, taxes and penalties required by law are not paid, this failure establishes a first lien on the property of the delinquent corporation. The lien must be filed.¹⁴² It is interesting to note that the filing of this lien by the Secretary of State is not mandatory but permissive. Although there are no known cases of abuse of this discretion, the fact that the lien may not be filed leaves room for a bad situation to develop as far as putting the general public on notice. Justice would be better served if such filing of the lien were made mandatory.

5. *Dissolution for Nonpayment of Occupation Taxes*

Nebraska law sets out a definite procedure for dissolving domestic corporations failing to pay occupation taxes within one year after due date.¹⁴³ Foreign corporations failing to pay occupation taxes within one year after due date are likewise barred from doing business in Nebraska.¹⁴⁴ A means of reviving corporations so dissolved for nonpayment of occupation tax was noted earlier.

Important questions occur concerning applicability of these statutes to certain nonprofit corporations including religious societies. The nonprofit corporations about which there could be some question are those having capital stock since the law only

¹⁴¹ Neb. Rev. Stat. § 21-316 (Reissue 1954).

¹⁴² Neb. Rev. Stat. § 21-312 (Reissue 1954).

¹⁴³ Neb. Rev. Stat. § 21-323 (Reissue 1954).

¹⁴⁴ Neb. Rev. Stat. § 21-325 (Reissue 1954).

requires nonprofit reports from the domestic nonprofit organizations "having no capital stock."¹⁴⁵ The status of religious associations also seems in doubt. The law should be clearly defined so that it would be clear whether such corporations are subject to dissolution for nonpayment of occupation taxes.

F. CORPORATIONS NOT INCLUDED UNDER GENERAL CORPORATION LAWS

There are some twelve classifications of Nebraska corporations not under the general corporation laws of the state. We shall discuss each class briefly in order to show the inconsistent manner in which this body of law has grown in Nebraska. Questions of particular importance in analyzing these corporations include:

Why do we treat the class separately and not include it in the General Corporation Laws?

Why is there a different initial filing requirement for one class as compared with another?

Why are the classes not all treated the same with regard to payment of occupation taxes and dissolution for failure to comply?

1. *Bridge Companies*

Five or more persons may associate "for the purpose of constructing a bridge over any of the streams of water" in Nebraska. The filing of a certificate in the Office of the Secretary of State by persons engaging in such an activity establishes such a corporation.¹⁴⁶ There is no provision for filing further information. No annual reports are required nor does such corporation pay occupation taxes. There is no legislation concerning the dissolution of such corporations thus a substantial question concerning property rights arises. Legislative history concerning the development of this type of corporation is lacking. However, since the law relates to taking tolls,¹⁴⁷ it appears that the law had its inception as a result of the need for expediting transportation in Nebraska. Formation of such bridge companies encouraged private investment in construction of bridges at that time. Inasmuch as present day bridge construction and operation is largely governmental, it would be well to re-examine the need for retaining this law.

¹⁴⁵ Neb. Rev. Stat. § 21-307 (Supp. 1955).

¹⁴⁶ Neb. Rev. Stat. § 21-401 (Reissue 1954).

¹⁴⁷ Neb. Rev. Stat. § 21-407 (Reissue 1954).

2. *Real Estate Corporations*

Article 5 of Chapter 21 consists of four sections¹⁴⁸ providing for a special type of corporation organization as to membership and capital stock. There is no provision for filing articles of incorporation, or annual reports under this article. It does provide that members will organize themselves pursuant to the General Corporation Law. Because of this direct reference to the General Corporation Law, it is difficult to understand why it is necessary to include this under a separate article when the same could be accomplished by merely filing under the general law. There is no power authorized under Article 5 which a corporation could not have under Article 1 and the retention of both Articles only leads to confusion in interpretation and administration.

3. *Charitable and Fraternal Societies*

Article 6 of Chapter 21 consists of several separate and distinct legislative acts¹⁴⁹ dealing with charitable or fraternal corporations.

Charitable Societies: Three or more persons may organize "for any charitable purpose" according to procedure outlined in the first seven sections of Article 6.¹⁵⁰ The definition of "charitable societies" sets out some specific purposes and concludes with the broad catch-all phrase "and for other humanitarian or benevolent purposes."¹⁵¹ Articles of incorporation are filed with the Secretary of State; however, the law does not require annual reports. Instead, corporations formed under this act must file reports only upon the request of the Attorney General or the Legislature. The fact that such reports are made only upon request and the Secretary of State receives no information after the initial filing of the articles of incorporation makes it difficult to determine the status of such corporations at any given time.

Fraternal Societies: Some 108 fraternal organizations, including fifty-two collegiate societies, are declared corporations by legislative

¹⁴⁸ Neb. Rev. Stat. §§ 21-501-04 (Reissue 1954).

¹⁴⁹ Neb. Laws c. 1, p. 64 (1869); Neb. Laws c. 30, p. 203 (1885); Neb. Laws c. 39, p. 403 (1889); Neb. Laws c. 17, p. 218 (1891); Neb. Laws c. 41, p. 282 (1905); Neb. Laws c. 31, p. 160 (1907); Neb. Laws c. 26, p. 202 (1909); Neb. Laws c. 11, p. 69 (1917); Neb. Laws c. 156, p. 351 (1919); Neb. Laws c. 147, p. 622, (1921); Neb. Laws c. 174, p. 670 (1921); Neb. Laws c. 34, p. 144 (1923); Neb. Laws c. 148, p. 383 (1925); Neb. Laws c. 57, p. 222 (1929); Neb. Laws c. 46, p. 168 (1935); Neb. Laws c. 52, p. 216 (1937); Neb. Laws c. 30, p. 114 (1949); Neb. Laws c. 44, p. 161 (1953).

¹⁵⁰ Neb. Rev. Stat. §§ 21-601-07 (Reissue 1954).

¹⁵¹ Neb. Rev. Stat. § 21-601 (Reissue 1954).

enactment.¹⁵² The organizations described in the statute automatically become bodies corporate in Nebraska. The "filing of a charter is merely a condition precedent to hold title to real estate in its own name."¹⁵³ However, such a charter must be filed with the Secretary of State to effect such purposes.¹⁵⁴ When the charter is filed for purposes of holding and conveying real estate, there is no requirement that any further reports or filings be made by such organization. Under these circumstances, the record of many fraternal societies is very incomplete. It is submitted that incorporating any organization by legislative act fills the statutes with matter which should rather be on file in a legally constituted filing agency such as the Office of Secretary of State. It is far too rigid a method to incorporate an association by legislative act. If any of the described organizations¹⁵⁵ undergo a change in name of the supreme or national association, it becomes necessary to change the name by means of introducing a bill at the next session of the legislature. It seems it would be more practical to file all these organizations directly with the Secretary of State. This would make certain that all such fraternal societies were correctly on file as a matter of public record.

Operation of Orphanages: Special statutory provision is made for fraternal, benevolent and charitable organizations desiring to operate homes for orphans, the aged or indigents.¹⁵⁶ If these organizations have been incorporated by the laws of Nebraska, they may issue charters to subordinates to carry on this work.¹⁵⁷ This includes gathering and investing funds for carrying out these purposes. The grand organization may actually carry out the objects and purposes outlined above without forming an auxiliary corporation.¹⁵⁸ However, when the grand lodge or grand body does hold funds or property in its own name, it must file its charter with the Secretary of State.¹⁵⁹ In the event that an auxiliary corporation is formed to operate the orphanage, the articles of incorporation of such auxiliary organization must be filed with

¹⁵² Neb. Rev. Stat. § 21-608 (Reissue 1954).

¹⁵³ See *Collins v. Russell*, 114 F.2d 334 (8th Cir. 1940); and *Bejot v. Ainsworth Lodge, I.O.O.F.*, 128 Neb. 631, 259 N.W.2d 745 (1935).

¹⁵⁴ Neb. Rev. Stat. § 21-609 (Reissue 1954).

¹⁵⁵ Neb. Rev. Stat. § 21-601 (Reissue 1954).

¹⁵⁶ Neb. Rev. Stat. §§ 21-612-19 (Reissue 1954).

¹⁵⁷ Neb. Rev. Stat. § 21-612 (Reissue 1954).

¹⁵⁸ Neb. Rev. Stat. § 21-613 (Reissue 1954).

¹⁵⁹ Neb. Rev. Stat. § 21-615 (Reissue 1954).

the Secretary of State.¹⁶⁰ Although the books, records, and files of such corporations are subject to the inspection of the State Auditor of Public Accounts,¹⁶¹ such reports are made only upon specific request of the Auditor. *Quaere* whether such reports made only upon official request are sufficient? It is difficult to reconcile the fact that it is mandatory for a domestic profit making corporation regardless of size, to render an annual report while in other cases, including organizations concerned with the operation of homes for orphans, aged or indigent persons, no report is required except upon specific request. Lack of consistency once again is apparent.

Society Names and Emblems: Certain organizations described by statute¹⁶² are permitted to register with the Secretary of State, facsimiles or descriptions of the organizational name, including registrations of badges, buttons, mottos, decorations, charms, emblems, rosettes or other insignia. Registration is permitted whether or not the organization is incorporated. The 1929 act allows considerable discretion on the part of the Secretary of State in accepting or rejecting such registrations.¹⁶³ No registration is granted or an alteration permitted where it is determined that it is "similar to, imitating, or so nearly resembling as to be calculated to deceive."¹⁶⁴ It is to be noted that the power of the Secretary of State in this instance goes beyond his authority generally to accept names of corporations.

4. *Educational Institutions*

Article 7 of Chapter 21 contains several types of educational institutions. Such may be created as a "body corporate, and politic with perpetual succession."¹⁶⁵ These are examples of corporations created by statute for a particular purpose and not under the general corporation laws. No records of these corporations can be found in the Office of Secretary of State either as to incorporation or current status.

Establishing College, University, or Normal School: Five or more persons may establish a college, university or normal school by applying to the county judge of the county where application

¹⁶⁰ *Ibid.*

¹⁶¹ Neb. Rev. Stat. § 21-614 (Reissue 1954).

¹⁶² Neb. Rev. Stat. § 21-617 (Reissue 1954).

¹⁶³ Neb. Laws c. 140, p. 497 (1929).

¹⁶⁴ Neb. Rev. Stat. § 21-620 (Reissue 1954).

¹⁶⁵ Neb. Rev. Stat. § 21-701 (Reissue 1954).

is made. The county judge appoints appraisers who return specified information to the county court which thereupon issues a certificate to be filed with the county clerk of the county where the educational institution is to be located.¹⁶⁶ Corporations organized under this law for the purpose of theological or religious training must set forth in their articles of incorporation the name of such religious denomination and the declaration that all properties will be held in trust for that religious body.¹⁶⁷ Theological corporations formed under other laws of Nebraska may avail themselves of this law by filing a certificate of acceptance with the Secretary of State.¹⁶⁸ Formation of academies is included under this law.

University Where Value Exceeds \$100,000: Proof that corporation laws relating to educational institutions are actually out of date is evidenced by the special statutes dealing with universities established with the value of \$100,000 or more.¹⁶⁹ In 1879¹⁷⁰ any institution possessed with funds, securities and property of such value may have been something special. However, in 1957, a single building housing a few classrooms would exceed the amount of \$100,000 in value. These laws are still in effect and provide for incorporation procedure through the District Court of the county in which the institution is located.¹⁷¹ This differs from the procedure outlined previously, which involves the county judge.¹⁷²

Foreign Universities or College Corporations: University or college corporations organized under the laws of other states for educational purposes are permitted to qualify by domesticating in Nebraska.¹⁷³ The domestication procedure is not set out clearly save for a reference back to the general corporation laws in this regard.

Fine Arts Societies: Persons desiring to incorporate for the promotion of education in sculpture, literature, painting, music, drama, etc. may do so by specific procedure set out in an act passed by the legislature in 1921.¹⁷⁴ Although contents of the articles of

¹⁶⁶ Neb. Rev. Stat. § 21-702 (Reissue 1954).

¹⁶⁷ Neb. Rev. Stat. § 21-706 (Reissue 1954).

¹⁶⁸ Neb. Rev. Stat. § 21-708 (Reissue 1954).

¹⁶⁹ See Neb. Rev. Stat. §§ 21-718-20 (Reissue 1954).

¹⁷⁰ Neb. Laws c. 1, p. 189 (1879).

¹⁷¹ Neb. Rev. Stat. § 21-718 (Reissue 1954).

¹⁷² Neb. Rev. Stat. § 21-702 (Reissue 1954).

¹⁷³ Neb. Rev. Stat. § 21-721 (Reissue 1954).

incorporation are specified,¹⁷⁵ the law does not state where the articles are to be filed. Since the law provides that such fine arts corporations "shall be established and conducted for the benefit of the general public",¹⁷⁶ it seems illogical not to provide for annual reports.

5. *Religious Societies*

Historical Notes: Religious corporations in the United States take the place of "common-law spiritual or ecclesiastical corporations."¹⁷⁷ Religious societies today are civil in nature and are "subject to the same principles of law and the same control by the civil courts as any other civil corporation."¹⁷⁸ Due to the early feeling in the United States concerning separation of Church and State, not many of the early religious bodies were incorporated.¹⁷⁹ In order to enable religious groups to enjoy legal privileges of limited financial liability for the individual, American legislatures were soon passing special acts granting charters to religious societies. Special charters brought with them abuse and public reaction led to constitutional prohibitions. The result was the establishing of "general incorporation laws for religious societies."¹⁸⁰ In 1864 the Nebraska Territorial Legislature enacted a new general incorporation law which contained five sections dealing with "Religious and Other Societies."¹⁸¹ Earliest legislation on the subject by Nebraska as a state came about in 1883 when the procedure for incorporating religious societies was spelled out.¹⁸² It is important to note that incorporation by religious associations is not necessary in Nebraska. In fact, when Nebraska Law on Religious Societies was recodified in 1949,¹⁸³ one of the four group classifications included the "unincorporated church, parish, congregation, or association."¹⁸⁴ One of the interesting historical side lights to religious corporations in Nebraska concerns the Protestant Episcopal

¹⁷⁴ Neb. Laws c. 135, p. 596 (1921); see Neb. Rev. Stat. §§ 21-725-31 (Reissue 1954).

¹⁷⁵ Neb. Rev. Stat. § 21-726 (Reissue 1954).

¹⁷⁶ Neb. Rev. Stat. § 21-731 (Reissue 1954).

¹⁷⁷ Fletcher, 1 *Cyclopedia of the Law of Private Corporations* 276 (1931).

¹⁷⁸ *Ibid.*

¹⁷⁹ Zabel, *God and Ceaser in Nebraska* 40 (1955).

¹⁸⁰ Neb. Terr. Laws, p. 176 (1856).

¹⁸¹ Neb. Terr. Laws, p. 93 (1864).

¹⁸² Neb. Laws c. 17, p. 177 (1883).

¹⁸³ Neb. Laws c. 31, p. 117 (1949).

¹⁸⁴ Neb. Rev. Stat. § 21-834(1) (Reissue 1954).

Church. In territorial days, "officials of the Protestant Episcopal Church were apparently not satisfied with the general corporation law" and "in 1862 an act was passed describing in detail the mode of incorporation for Protestant Episcopal churches."¹⁸⁵ These laws are still in effect¹⁸⁶ and were not repealed or amended by the general recodification in 1949.¹⁸⁷ The Nebraska Legislative Council Sub-committee on Religious Societies recommended as a result of a special study in 1948, that sections relating exclusively to local churches of the Protestant Episcopal faith be omitted and that such churches may then be incorporated under the same statutes and in the same manner as are other churches similarly situated.¹⁸⁸ It is submitted that it is time that this 1948 recommendation be given renewed consideration.

The Religious Societies Law of 1949: During the 1947 session of the Nebraska Legislature, a motion was adopted directing the Legislative Council "To study the laws relating to incorporation of religious societies and the conveyances of real estate by such societies . . ." ¹⁸⁹ The sub-committee which studied the matter considered "the legal status of religious associations, whether incorporated or unincorporated, with respect to forms of government, power to enter into contracts, liability to suit, etc., as well as their power to convey real estate."¹⁹⁰ Many of the recommendations of the Legislative Council ¹⁹¹ were included in legislation passed at the 1949 session of the Legislature.¹⁹² Some of the features of the 1949 Act are as follows:

(1) **SPECIFIC CLASSIFICATIONS:** Four specific classifications of religious societies were set out in the 1949 law.¹⁹³ A fifth classification was added in 1951.¹⁹⁴ These classifications are extremely important inasmuch as powers relating to the acquiring, selling or encumbering real or personal property depend upon these classifications.¹⁹⁵ An amendment in 1955 added the requirement that

¹⁸⁵ Neb. Terr. Laws, pp. 57-61 (1861).

¹⁸⁶ Neb. Rev. Stat. §§ 21-816-30 (Reissue 1954).

¹⁸⁷ Neb. Laws c. 31, p. 117 (1949).

¹⁸⁸ 18 Neb. Legis. Council Rep. 29 (1950).

¹⁸⁹ Neb. Legis. Journal, pp. 328-29 (1950).

¹⁹⁰ 18 Neb. Legis. Council Rep. 2 (1950).

¹⁹¹ *Id.* at 26.

¹⁹² Neb. Laws c. 31, p. 117 (1949).

¹⁹³ *Ibid.*

¹⁹⁴ Neb. Laws c. 38, p. 140 (1951).

¹⁹⁵ Neb. Rev. Stat. §§ 21-835-48 (Reissue 1954).

articles of incorporation must contain the classification of the religious society.¹⁹⁶

(2) **EFFECT OF THE GENERAL CORPORATION LAW:** Three of the five specific classifications refer back to the general corporation laws of the state, which admittedly apply only to profit making organizations.¹⁹⁷ Only class three applied the general corporation law as a result of the 1949 act. This greatly hampered the process of amending articles of incorporation of religious societies.¹⁹⁸ Because the law does not apply the general corporation laws to classes one and five,¹⁹⁹ there exists considerable confusion as to whether it is necessary for religious societies of class one and five to pay filing fees, file annual reports and pay occupation taxes. In fact, it has been questioned whether a religious corporation is subject to occupation taxes under any circumstances. And some persons are of the opinion that laws relating to annual reports and occupation tax need not be followed by religious societies. It is the administrative practice of the Office of Secretary of State to consider all religious societies under Article 8 as nonprofit corporations which must (1) pay filing fees; (2) name resident agents; (3) file annual reports; and (4) pay occupation tax. None of these practices have been reviewed by the Nebraska Supreme Court. Legislative clarification is badly needed.

(3) **CHANGE OF NAME BY PARENT CHURCH BODY:** A particularly difficult administrative problem is caused by a statute providing that a parent religious association may file a change of name with the Secretary of State which filing automatically changes the names of all local corporate religious bodies operating independently but under the authority of the parent body.²⁰⁰ As a practical matter, this law virtually is impossible to administer since it fails to provide for a listing of all local bodies affected.

(4) **OTHER PROBLEMS INVOLVING AMENDING ARTICLES OF INCORPORATION:** Difficulties involved in amending articles of incorporation of religious societies are accentuated by the fact that prior to 1949, religious organizations incorporated by merely filing their articles

¹⁹⁶ Neb. Laws c. 63 § 9 (1955).

¹⁹⁷ For Class Two see Neb. Rev. Stat. § 21-847 (Supp. 1955); for Class Three see Neb. Rev. Stat. § 21-842 (Reissue 1954); for Class Four see Neb. Rev. Stat. § 21-847 (Supp. 1955).

¹⁹⁸ Hearings before Judiciary Committee on L.B. 103, Neb. Legis., 62d Sess. (1951).

¹⁹⁹ Neb. Rev. Stat. § 21-834 (Reissue 1954).

²⁰⁰ Neb. Rev. Stat. § 21-852 (Reissue 1954).

of incorporation with the county clerk of the county where such religious organization was located.²⁰¹ There was no provision for the filing of these articles with the Secretary of State. These provisions, which had been in effect since 1883, were repealed by the 1949 Act.²⁰² It is to be noted that the grandfather clause in the 1949 act protected all religious societies incorporated prior to that time.²⁰³ The Attorney General is of the opinion that where a religious organization was properly filed under the laws as they existed prior to 1949, such a corporation may amend its articles of incorporation and it is the ministerial duty of the Secretary of State to file a copy of the said amendment pursuant to statute²⁰⁴ even though the original articles of incorporation have never been filed in the office of the Secretary of State.²⁰⁵ It is recommended that in order to maintain more complete corporate records in the Office of Secretary of State, it be required that certified copies of the original filing of the articles of incorporation in the county clerk's office be submitted before amendments can be filed.

(5) RELIGIOUS ASSOCIATIONS IN GENERAL: Article 8 of Chapter 21 should be completely redrafted placing particular emphasis on the problems discussed above. It would seem more reasonable to establish within the article itself whether a resident agent should be appointed, articles and amendments published, annual reports rendered and occupation taxes or fees paid. Corporate procedure relating to each of the five enumerated classifications should be self contained within the single classification. This would aid in removing such ambiguity as exists in attempting to outline procedures for two or three classes within one section of the statute.²⁰⁶ There is so much confusion that in one case, classifications four and five are expanded under classifications two and four.²⁰⁷ A redrafting should eliminate reference back to the general corporation laws and should clearly spell out the nonprofit nature of all religious associations.

(6) THE QUESTION OF OCCUPATION TAX: Since the question

²⁰¹ See Neb. Rev. Stat. §§ 21-801-04 (Reissue 1954).

²⁰² Neb. Laws c. 31, p. 117 (1949).

²⁰³ Neb. Rev. Stat. § 21-849 (Reissue 1954).

²⁰⁴ Neb. Rev. State § 21-834.01 (Reissue 1954).

²⁰⁵ Letter from Richard H. Williams, Ass't Att'y Gen., to Roland A. Luedtke, Dep. Sec. of State, Apr. 14, 1955, on file in office of Sec. of State.

²⁰⁶ See Neb. Rev. Stat. §§ 21-843-48 (Reissue 1954).

²⁰⁷ See Neb. Rev. Stat. § 21-845 (Reissue 1954) which refers to Neb. Rev. Stat. §§ 21-847-48 (Reissue 1954) for procedure.

of occupation taxes on religious organizations has been raised, the entire problem of *tax exemption* should be carefully reviewed. The Nebraska Constitution provides that "The Legislature may exempt . . . property owned and used exclusively for . . . religious purposes" ²⁰⁸ But, note that the Constitution refers to a taxation of *property* which can be distinguished from a so-called fee paid annually upon the submission of an annual report. Nebraska exemption provisions apply only to general property taxes and not to other forms of taxation. ²⁰⁹ Though the fee is technically a tax or means of revenue, the legislature doubtless has the power to assess such charges against religious societies. If such were done, it would be preferable to designate the fee specifically, rather than incorporate it by an ambiguous reference.

6. *Nonprofit Professional and Similar Associations*

Article 9 of Chapter 21 sets out the law for two widely separated types of organizations, *professional* and *detective* associations. *Quaere* why the two have been placed in the same article.

Nonprofit Professional Associations: Various professional associations concerned with law, medicine, divinity, architecture, engineering, etc., are permitted to organize on a nonprofit basis under this law. ²¹⁰ The statute, however, is so broad as to include "associations not organized for profit" ²¹¹ which covers almost the entire field of nonprofit organizations. This catch-all clause causes one to doubt the value or wisdom of continuing this 1877 Act. ²¹² The only formal requirement of the professional association is that it file a copy of its constitution and by-laws in the Office of Secretary of State. ²¹³ There is no statutory description as to the contents of such a constitution or by-laws save that they must be "duly attested by their president . . . and countersigned by their secretary." ²¹⁴ It is interesting to note that this is one of the few instances where by-laws are actually filed with the Secretary of State. These professional associations file no annual reports and pay no occupation taxes because they do not come under the

²⁰⁸ Neb. Const. art. 8, § 2; see also 18 Neb. Legis. Council Rep. 22 (1950).

²⁰⁹ See *Beatrice v. Brethren Church of Beatrice*, 41 Neb. 358, 59 N.W. 932 (1894) (religious society was not exempt from a special tax for paving and building sidewalks).

²¹⁰ Neb. Rev. Stat. § 21-901 (Reissue 1954).

²¹¹ *Ibid.*

²¹² Neb. Laws, p. 119 (1877).

²¹³ Neb. Rev. Stat. § 21-901 (Reissue 1954).

²¹⁴ *Ibid.*

general corporation laws. There is no reason why associations formed under this article could not just as easily come under one comprehensive article dealing with nonprofit corporations without capital stock.

Detective Associations: The only statutory authority for establishing a private detective or secret service business in Nebraska is outlined in Article 9.²¹⁵ It appears that more than one person must be engaged in such activity in order to organize this type of enterprise.²¹⁶ The law further requires the filing of a bond with the Secretary of State.²¹⁷ The statute providing for the justification of sureties on such bonds²¹⁸ strongly implies that only personal sureties are acceptable. It has been the administrative practice of the Secretary of State to accept corporate sureties in the past. However, this writer is of the opinion that corporate surety bonds may not be valid. The Attorney General has not given an official opinion on the subject and no case law is available. Since the Secretary of State files such documents as a ministerial agent or filing officer, the matter is not one of discretion. He merely files the bond for what it is worth. The law recognizing organization of detective associations was adopted in 1885²¹⁹ and has not been changed since that time. It is submitted that the needs for private investigators and secret service organizations have changed materially since this early date. Methods of law enforcement in this mid-twentieth century call for entirely new approaches to legislation in this field. Under the present law there is no correlative legislation safeguarding the general public from the operations of such private investigators. Certainly any organization performing the services of a private detective should be integrated to some degree with the overall program of law enforcement in the community. Once the Secretary of State issues a certificate of compliance, he has no further control over the matter. Neither does the Secretary of State have authority to investigate the operations of individual members of such organizations in the event there are complaints. Nevertheless, the Secretary of State is responsible for issuing the *certificate of compliance* which in effect is a show of right to the general public that the person bearing such certificate is a legally

²¹⁵ Neb. Rev. Stat. 21-904-14 (Reissue 1954).

²¹⁶ See Neb. Rev. Stat. § 21-904 (Reissue 1954) which states that "Whenever any number of persons associate themselves together . . ." showing plural usage throughout.

²¹⁷ Neb. Rev. Stat. § 21-905 (Reissue 1954).

²¹⁸ Neb. Rev. Stat. § 21-906 (Reissue 1954).

²¹⁹ Neb. Laws c. 24, p. 189 (1885).

constituted private detective, secret service operator or investigator. Although most persons operating under this law are engaged in completely legitimate activities, the weakness of the law is an open invitation to potential abuses. There is a definite place in our present society for private detectives, but it is suggested that persons in such professions, as well as the general public, would be better served under a more comprehensive regulation, such as the Private Detectives' and Investigators' License Law of New York.²²⁰ The law provides reasonable regulations and effective means of enforcement.²²¹ Granted the need for such regulations in Nebraska varies greatly from that of the more populous State of New York, the act nevertheless would provide an excellent model for better legislation on the matter.

7. *Burial Associations*

In 1931 the Nebraska Legislature provided procedures for forming a corporation insuring or paying money for the purpose of defraying funeral expenses.²²² A certificate of authority for such a business is obtained from the Director of Insurance.²²³ Although reference is made to a charter or articles of incorporation,²²⁴ it merely assumes that such record of organization exists and does not specify either a place of filing or contents thereof. There is a vague reference to "licenses issued by the Auditor of Public Accounts."²²⁵

This is another example of a corporation matter brought under the jurisdiction of a separate department where none of the instruments of organization are filed with the Secretary of State. Filing

²²⁰ N.Y. General Business Law §§ 70-90.

²²¹ As to personal qualifications of the licensees, the statute requires that a rather complete dossier be filed with the Secretary of State, replete with photographs and fingerprints. The applicant must have had at least three years of investigative experience with a governmental agency. At least five reputable citizens must recommend him. No license can be issued to persons convicted of a felony or of certain designated misdemeanors.

Each licensee must give a \$10,000 bond conditioned on faithful and honest conduct. Persons injured through violation of the statute by the licensee, or through his willful, malicious, and wrongful acts can recover on the bond.

Licenses can be denied or revoked for cause after a hearing with due notice. The decision may be appealed. Fines and/or imprisonment are provided for violation of prohibited acts.

²²² Neb. Laws c. 25, p. 100 (1931).

²²³ Neb. Rev. Stat. § 21-1002 (Reissue 1954).

²²⁴ *Ibid.*

²²⁵ Neb. Rev. Stat. § 21-1002 (Reissue 1954).

fees by both resident and non-residents associations are paid to the Department of Insurance.²²⁶ The Director of Insurance in issuing the certificate of authority has considerable discretion as to accepting or rejecting the proposed name of the association.²²⁷

Powers of attorney must be filed with the Secretary of State before such an association can commence business in Nebraska.²²⁸ This is the only duty of the Secretary of State relating to burial associations. Annual reports as to the financial condition of the association are made and filed with the Director of Insurance.²²⁹

8. *Fontenelle Forest Association*

This special corporation was granted a legislative charter in 1913²³⁰ for the purpose of "securing and developing, for the education of the public, of lands lying along the Missouri River in Douglas and Sarpy Counties, Nebraska."²³¹ The organization operates completely at the pleasure of the Legislature²³² and no articles of incorporation are on file. The corporation is empowered to adopt by-laws²³³ but is not brought under general corporation laws. Accordingly there are no reports or fees payable to the Secretary of State. In view of the fact that the law provides for "public cooperation in the form of memberships . . . for the purpose of raising funds,"²³⁴ it seems advisable to require some annual report in order that the general public may more easily review the activities of the association.

9. *Union Depot Companies*

In 1887 the Legislature passed an act²³⁵ dealing with the organization of a corporation to construct, maintain, and operate union freight and passenger depots, and all tracks, structures and appliances appurtenant and incident thereto.²³⁶ Because the legislation in question failed to set out any formal requirements for filing articles of incorporation, furnishing annual reports or paying

²²⁶ See Neb. Rev. Stat. §§ 21-1002, 1011 (Reissue 1954).

²²⁷ Neb. Rev. Stat. § 21-1003 (Reissue 1954).

²²⁸ Neb. Rev. Stat. § 21-1010 (Reissue 1954).

²²⁹ Neb. Rev. Stat. § 21-1014 (Reissue 1954).

²³⁰ Neb. Laws c. 176, p. 531 (1913).

²³¹ Neb. Rev. Stat. § 21-1102 (Reissue 1954).

²³² Neb. Rev. Stat. § 21-1101 (Reissue 1954).

²³³ Neb. Rev. Stat. § 21-1104 (Reissue 1954).

²³⁴ Neb. Rev. Stat. § 21-1111 (Reissue 1954).

²³⁵ Neb. Laws c. 20, p. 342 (1887).

²³⁶ Neb. Rev. Stat. § 21-1601 (Reissue 1954).

occupation taxes, it is to be assumed that this is another example of particular legislation passed early in Nebraska history to encourage development of the state. It would be well to determine whether there is any need for such laws today and if not, to repeal them.

10. *Credit Unions*

Article 17 of Chapter 21 provides for the establishing and operating of credit union organizations in Nebraska. The Department of Banking has complete jurisdiction over the incorporating procedure²³⁷ as well as subsequent administration of this act and nothing relative to credit unions is connected with the Secretary of State. The only difficulty arising out of this arrangement is the fact that the public looks to the Secretary of State for information relative to any and all corporate bodies, including credit unions.

11. *Membership Corporations and Associations*

The last article in Chapter 21 appears as a catch-all membership corporation statute²³⁸ passed by the Legislature in 1947 to make it difficult for "subversive organizations" to operate in Nebraska.²³⁹ It applies to all membership corporations existing in 1947 or subsequently organized with designated exceptions. It further applies to unincorporated membership associations having twenty or more members. Groups not requiring an oath as a condition of membership are not within the statute.²⁴⁰

The obvious intent of this act was to exercise strict control over the activities of all membership corporations in Nebraska. This was to be accomplished by requiring all to file a copy of their constitution, by-laws, rules, regulations and oath of membership as well as any subsequent revisions or amendments. The law requires filing a roster of membership and a supplemental report on additional members every six months.

From the administrative standpoint, the requirements under this act appear to be so rigid that absolute compliance is impossible. As a result, it has been the experience of the Office of Secretary of State that very few membership associations are complying with the law. Although there is a penalty provision for violation of the act,²⁴¹ such violations constitute misdemeanors requiring

²³⁷ See Neb. Rev. Stat. §§ 21-1705-09 (Reissue 1954).

²³⁸ See Neb. Rev. Stat. §§ 21-1801-04 (Reissue 1954).

²³⁹ Neb. Laws c. 58, p. 191 (1954).

²⁴⁰ Neb. Rev. Stat. § 21-1801 (Reissue 1954).

²⁴¹ Neb. Rev. Stat. § 21-1804 (Reissue 1954).

charges to be filed by the county attorney upon proper complaint. This writer is aware of no recorded convictions under this law which has been in effect almost ten years. Furthermore, the law does not compel the Secretary of State to enforce the act in any way. In fact, it would be impossible for the Secretary of State to determine which unincorporated membership associations were in violation since there would be no public record of the existence of such organizations. The position of the Secretary of State in enforcing this law is merely that of a ministerial officer or filing agent and he has no further authority.

It is this writer's opinion that the law in question has not achieved its purpose and that it is being flagrantly violated by many well intentioned persons who do not realize the law exists. This particular piece of legislation should be reviewed in the light of administrative experience and should either be repealed or amended to make its administration more practical.

12. *Corporate Bodies Not in Chapter 21*

There are numerous corporations set out by specific laws other than those appearing in Chapter 21 of the Revised Statutes of Nebraska. Although these organizations are not discussed at length, a few of them are commented upon to show how they relate to the Office of Secretary of State.

Agricultural Associations: Four specific organizations associated with agriculture are incorporated under Chapter 2 of the Revised Statutes of Nebraska. They include: (1) Nebraska Dairymen's Association;²⁴² (2) Nebraska Corn Improvers' Association;²⁴³ (3) Nebraska State Poultry Association;²⁴⁴ and (4) Nebraska Potato Improvement Association.²⁴⁵ All four are incorporated as of the date of original passage of the bills of the Legislature which created them. According to the statutes, articles of incorporation are filed in the Office of Secretary of State.²⁴⁶ Again it is to be noted that there is no provision for any further reports or filings. Annual reports in all four cases are to be made to the

²⁴² Neb. Laws c. 83, p. 565 (1889); see also Neb. Rev. Stat. §§ 2-501-05 (Reissue 1954).

²⁴³ Neb. Laws c. 24, p. 196 (1909); see also Neb. Rev. Stat. §§ 2-601-03 (Reissue 1954).

²⁴⁴ Neb. Laws c. 21, p. 156 (1893); see also Neb. Rev. Stat. §§ 2-701-05 (Reissue 1954).

²⁴⁵ Neb. Laws c. 226, p. 970 (1919); see also Neb. Rev. Stat. § 2-801 (Reissue 1954).

²⁴⁶ See Neb. Rev. Stat. §§ 2-501, 601, 701, 801 (Reissue 1954).

Governor²⁴⁷ and published pamphlets are to be distributed according to laws governing distribution of reports of the State Board of Agriculture.²⁴⁸ Investigation reveals that these reports have not been published and distributed for many years. It would seem advisable therefore to examine the need for such laws and either repeal or amend the same.

Banks, Trust Companies, Building and Loan Associations, and Industrial Loan and Investment Companies: Although general supervision of banking is under the Director of Banking,²⁴⁹ articles of incorporation are filed with the Secretary of State.²⁵⁰ The banking department also has jurisdiction over issuing charters to trust companies.²⁵¹ However, articles of incorporation of trust companies are filed with the Secretary of State.²⁵² The same applies to Building and Loan Associations²⁵³ and Industrial Loan and Investment Companies.²⁵⁴ It would seem that in the above cases the filing of the articles of incorporation with the Secretary of State is unnecessary unless such filings are to be supplemented by annual reports as to current status of the corporations.

Insurance Companies: The Director of the Department of Insurance has general supervision over all insurance companies.²⁵⁵ Nevertheless, as is the case with banking corporations, the articles of incorporation must be filed with the Secretary of State.²⁵⁶ The same suggestion is made with respect to insurance companies concerning filing of subsequent reports, as was made concerning banks.

Drainage Districts: Drainage districts may be formed as bodies corporate in Nebraska according to district court procedure outlined by statute.²⁵⁷ Although such procedure actually results in the declaration of such an organization as a "public corporation,"²⁵⁸ it is required that a certified copy of the district court record be

²⁴⁷ See Neb. Rev. Stat. §§ 2-503, 603, 703, 804 (Reissue 1954).

²⁴⁸ See Neb. Rev. Stat. §§ 2-103-05 (Reissue 1954).

²⁴⁹ See Neb. Rev. Stat. §§ 8-101-814 (Reissue 1954).

²⁵⁰ Neb. Rev. Stat. § 21-1,146 (Reissue 1954).

²⁵¹ Neb. Rev. Stat. § 8-201 (Reissue 1954).

²⁵² Neb. Rev. Stat. § 8-202 (Reissue 1954).

²⁵³ Neb. Rev. Stat. § 8-306 (Reissue 1954).

²⁵⁴ Neb. Rev. Stat. § 8-403(1) (Reissue 1954).

²⁵⁵ See Neb. Rev. Stat. §§ 44-101-1612 (Reissue 1952).

²⁵⁶ Neb. Rev. Stat. § 44-205 (Reissue 1952).

²⁵⁷ See Neb. Rev. Stat. §§ 31-301-375 (Reissue 1952).

²⁵⁸ Neb. Rev. Stat. § 31-304 (Reissue 1952).

filed in the same manner as articles of incorporation are filed under the general corporation laws.²⁵⁹ Here again is an example of the initial filing in the Office of Secretary of State constituting the only record ever filed for such organization.

Railroads: Railroads are incorporated under Article 1 of Chapter 74 which allows five or more persons to become a body corporate by filing necessary articles of incorporation with the Secretary of State.²⁶⁰ One of the essential elements involved in railroad operation in Nebraska is the right of eminent domain.²⁶¹ This vitally effects railroads incorporated in states other than Nebraska. The basic requirement, without which it would be impossible for a railroad to operate in Nebraska, is set out in the State Constitution as follows:

No railroad corporation organized under the laws of any other state, or of the United States and doing business in this State shall be entitled to exercise the right of eminent domain or have power to acquire the right of way, or real estate for depot or other uses, until it shall have become a body corporate pursuant to and in accordance with the laws of this state.²⁶²

According to the Attorney General of Nebraska, there are four different ways in which the statutes of Nebraska allow railroad corporations to qualify for operation in this state.²⁶³ These include: (1) As a domestic corporation;²⁶⁴ (2) As a domesticated foreign corporation;²⁶⁵ (3) By consolidating a foreign corporation with a domestic corporation²⁶⁶ and filing articles of incorporation required under such circumstances;²⁶⁷ and (4) By purchasing or leasing a domestic railroad already organized under the laws of Nebraska.²⁶⁸ In all cases it is necessary that in order to exercise the power of eminent domain, acquiring property, etc., the railroad corporation shall file a written acceptance with the Secretary of State.²⁶⁹

Telegraph, Press Associations, and Express Companies: Telegraph companies and press associations, including any corpora-

²⁵⁹ Neb. Rev. Stat. § 31-305 (Reissue 1952).

²⁶⁰ Neb. Rev. Stat. § 74-102 (Reissue 1950).

²⁶¹ See Neb. Rev. Stat. §§ 74-301-329 (Reissue 1950).

²⁶² Neb. Const. art. 10, § 8.

²⁶³ Neb. Att'y Gen. Rep. 573 (1948).

²⁶⁴ Neb. Rev. Stat. §§ 21-101-1,157 (Reissue 1954).

²⁶⁵ Neb. Rev. Stat. 21-1,150 (Reissue 1954).

²⁶⁶ Neb. Rev. Stat. §§ 74-401-04 (Reissue 1950).

²⁶⁷ Neb. Rev. Stat. § 74-403 (Reissue 1950).

²⁶⁸ Neb. Rev. Stat. § 74-413 (Reissue 1950).

²⁶⁹ Neb. Rev. Stat. § 74-306 (Reissue 1950).

tion engaged in the transmission, collection, distribution or delivery of telegraphic dispatches, either for private use or for publication in newspapers must file its articles of incorporation with the Secretary of State.²⁷⁰ Since these are not filed under general corporation laws, there is considerable doubt as to the application of laws relating to annual reports, occupation tax, etc. Express Companies²⁷¹ are under the jurisdiction of the Railway Commission²⁷² and occupation taxes are based upon gross receipts and paid to the Tax Commissioner.²⁷³ No records or reports are filed with the Secretary of State.

Cemetery and Mausoleum Associations: Articles 5 and 6 of Chapter 12 of the Revised Statutes of Nebraska provide procedures for organizing cemetery and mausoleum associations. Cemetery associations are filed for record with the County Clerk only²⁷⁴ whereas the mausoleum association must file a copy of the certificate of organization with the Secretary of State.²⁷⁵ A special legislative act established Wyuka Cemetery in Lincoln, Nebraska as a "public charitable corporation"²⁷⁶ and the Board of Trustees of Wyuka Cemetery must annually file an itemized report of all receipts and expenditures in connection with the management and control of the cemetery.²⁷⁷

IV. SUMMARY AND CONCLUSIONS

This survey covers over ninety years of Corporation Law in Nebraska aimed at analyzing historical, legislative and administrative aspects of the subject. In the development of the corporation laws numerous administrative problems have resulted from the building of a code in piece-meal fashion. An attempt has been made to present administrative practices of the Secretary of State as well as official interpretations of these laws. A number of positive remedies calculated to correct some of the indicated weaknesses have been suggested.

²⁷⁰ Neb. Rev. Stat. § 86-102 (Reissue 1950).

²⁷¹ See Neb. Rev. Stat. §§ 86-501-9 (Reissue 1950).

²⁷² Neb. Const. art. 10, § 1.

²⁷³ See Neb. Rev. Stat. §§ 86-504-08 (Reissue 1950).

²⁷⁴ Neb. Rev. Stat. § 12-502 (Reissue 1954).

²⁷⁵ Neb. Rev. Stat. § 12-602 (Reissue 1954); see also *Omaha Nat'l Bank v. West Lawn Mausoleum Ass'n*, 158 Neb. 412, 63 N.W.2d 504 (1955).

²⁷⁶ Neb. Laws c. 197, p. 560 (1927).

²⁷⁷ Neb. Rev. Stat. § 12-101(4) (Reissue 1954).

It is to be noted that outright repeal of some portions of the corporate law has been recommended while amendments to many others are suggested. The overall goal should be to replace the present disorganized field of ambiguities with a better organized, shorter and more comprehensive body of law. This task can only be accomplished by means of a more thorough and exhaustive study of the findings and conclusions reached in this discussion.

A summary of conclusions and major recommendations for study and possible legislative action follows:

1. *Definitions:* Terms frequently used in dealing with corporation laws need to be clarified by re-defining some and adding others.
2. *Accepting or Rejecting Corporation Names:* Authority of the Secretary of State to accept or reject corporate names should be broadened. The fact that power to decide is only ministerial compels acceptance of names which actually cause difficulty because of similarity.
3. *Establishing Filing Formalities:* Since there is no consistent rule throughout the corporation laws as to witnessing, notarizing or acknowledging signatures on corporate documents, a more uniform approach should be specified with the same specific formalities for the same type of corporate instrument presented for filing.
4. *Obtaining Better Access to Records by Stockholders:* Although Nebraska's laws are not too deficient in allowing stockholders to obtain vital information concerning operation of corporate affairs, stockholders' access to financial records is still difficult. It is submitted that refusal of corporate officers to supply requested information of this type upon showing of legitimate right should result in a criminal as well as a civil penalty.
5. *Clarifying Voluntary Dissolution Procedure:* Where Nebraska statutes fail to provide a method for voluntary dissolution, such omission should be corrected. Furthermore, under the "General Corporation Law," procedure for voluntary dissolution should be clarified. Under Article 1 of Chapter 21 it seems that the filing of a consent certificate of stockholders is necessary. Several attorneys interpret the law under Article 3 to allow dissolution without filing the said consent certificate. The law should be made clear as to which is correct or should be amended to provide specifically that in the event the articles of incorporation out-

line a specific method of voluntary dissolution, the latter could be used in lieu of the statutory provision.

6. *Providing Proper Publication*: Because legal publication is required in order to effect corporate status, it is essential that all publication requirements, including that of time in which publication is to be made and proof of publication is to be filed should be made quite definite and certain. The present state of the law leaves much to be desired.
7. *Re-organizing Corporation Laws in General*: It is submitted that separate legislative acts, passed at different legislative sessions with different legislative intents obviously in mind, should be organized within the framework of the body of law as separate and distinct laws. This could be done by distinguishing the individual legislative acts within a given Article, even though the article might deal with the same general subject. This requires more than a mere footnote as to what constitutes a given act.
8. *Administering Some Corporations under Specific State Agency*: Several types of corporations for purposes of regulation or control are under the jurisdiction of a specific state agency. These corporations nevertheless make their initial filing of articles of incorporation in the Office of Secretary of State. Since no further reports of activity are forwarded to the Corporation Division, it would avoid duplication of effort if such corporate bodies were placed under the *exclusive jurisdiction* of the governmental agency which regulates that corporation. This would mean filing articles of incorporation in that agency originally, making all reports to that body, and paying any and all occupation taxes to such controlling agency. The only alternative to such exclusive jurisdiction is providing a uniform system of duplicate filings and reports in order that public records be complete both in the agency of jurisdiction as well as the Corporation Division of the Office of Secretary of State.
9. *Referring Back to "General Corporation Laws"*: The occasional reference back to "the General Corporation Law" causes a great amount of confusion whenever it is used. In some cases the portion of the general corporation laws which must be applied simply does not make sense. For example, note the impossibility of applying a non-profit-making corporation without capital stock to the general corporation law which presupposes stockholders. It is recommended that the practice of "reference back" be eliminated as far as is practical in corporation laws.

10. *Qualifying Foreign Corporation to Do Business; Governmental and Private Contracts:* All foreign corporations desiring to bid on governmental contracts should be qualified to do business before they are allowed to bid. Such a law would at least assure the State of Nebraska of the qualification fee for general fund purposes from each such foreign corporation. In order to administer such a law, the investigative power of the Secretary of State would have to be increased. An attempt should also be made to effect positive legislation either denying the right to enforce contracts entered into with Nebraskans by foreign corporations not qualified to do business or stipulating as to what conditions must be met in order that foreign corporations may sue in our courts.
11. *Placing Cooperatives in Nonprofit Category:* Since present administrative practice of the Secretary of State is to consider cooperative corporations to be nonprofit from the initial filing of the articles of incorporation to the making of annual reports and paying of occupation tax, vague references to the "general corporation law" should be eliminated with reference to cooperatives.
12. *Resolving the Nature of Occupation Taxes:* It is time that Nebraska resolves its problem as to the nature of its corporation occupation tax. Although much confusion exists, the entire interpretation depends upon whether the fee is a tax and a means of revenue or whether it is a franchise or license under the police power of the State. Since the latest legislative intent implies such sources are not to be considered revenue, this factor should be clarified.
13. *Operating Foreign Corporation Exclusively in Interstate Commerce:* It is hoped that some practical method will be devised to permit the Secretary of State to go behind the self-serving declarations of foreign corporations claiming to be operating "exclusively in interstate commerce" and therefore immune to our state laws regarding qualification to do business. This again involves increasing the investigative power of the Secretary of State.
14. *Remitting Penalties:* In order to prevent potential abuse for political purposes, it is suggested that the statute relating to penalty remissions be amended to limit use of this power by the constitutional officers involved to specifically defined situations.
15. *Filing of Tax Lien When Corporation Dissolved for Nonpayment of Tax:* Since filing of tax lien by the Secretary

- of State is permissive only, it is recommended that such an important factor in enforcement of the occupation tax law be made more certain. There is no need for discretion here.
16. *Dissolving Corporation for Nonpayment of Occupation Taxes:* It must be determined whether such a penalty can be brought against nonprofit corporations having capital stock, other nonprofit corporations, charitable or membership associations and religious societies. Whether the present practice of the Secretary of State to dissolve religious corporations for not paying occupation taxes is proper is a question which properly should be resolved by the legislature.
 17. *Analyzing Present-Day Need for Certain Bodies Corporate:* While generally reviewing all corporate bodies, it is well to analyze their present justification for existence. The need for special provisions for bridge companies or real estate societies is questionable.
 18. *Making Annual Reports:* Wherever possible, the information required on annual reports submitted to the Secretary of State should be made uniform. In order to have current status records on all corporations, make certain that all types of organizations make reports even if different reporting forms are required. A more or less standardized reporting form should be used. Furthermore, all such reports should be mandatory and should be transmitted to one officer, namely the Secretary of State. It would be advantageous to make due date of annual reports the same as date occupation tax is due and assessable.
 19. *Chartering Bodies Corporate by Legislative Act:* It is submitted that it is not good practice to charter organizations by legislative act when the same can be accomplished under a more general and more flexible corporation law. General corporation laws should be sufficiently flexible to provide for the incorporation of all types of organizations.
 20. *Laws Relating to Religious Societies:* Much is left to be desired, despite the general overhaul accomplished in 1949. Specifically, these questions should be considered: (1) The wisdom of continuing a separate body of law for one denomination—the Protestant Episcopal Church; (2) Whether religious corporations must appoint resident agents, make annual reports, pay occupation taxes and be subject to dissolution for nonpayment should be spelled out clearly by the legislature; (3) Name changes by parent bodies

should be accompanied by certified lists of local churches affected before such alterations are allowed to affect local church titles: (4) Amendments of the articles of religious societies should be required to be accompanied by certified copies of the original articles where the original was not filed with the Secretary of State.

21. *Detective Associations*: Statutory provisions relating to such organizations are wholly inadequate. Regulations along the lines of the New York statute previously referred to would be wise preventive legislation.
22. *Membership Organizations Requiring Oaths*: In the decade which has passed since the adoption of this legislation, virtually nothing has been accomplished under it. It would be well for the legislature to reconsider the necessity of such regulation, and if it is felt necessary, adequate funds and personnel should be provided to carry out its purpose.

The last sixteen years have brought considerable legislation in the field of corporation law in Nebraska. The by-products of this legislative activity are the numerous conflicts and inconsistencies pointed out in the text of this article. The time is ripe for a comprehensive review of the legislation in this field aimed at integrating those advances which have been made.