

*Hunter
The Governor*

**LAW LIBRARY
ARIZONA ATTORNEY GENERAL**

August 30, 1954
Letter Opinion
No. 54-222-L

Mrs. Edwina Eisenhart
Director of Incorporation
Arizona Corporation Commission
Phoenix, Arizona

Re: Filing of articles of incorporation of a corporation sole.

Dear Mrs. Eisenhart:

Your letter of recent date requests that we re-examine our opinion No. 53-3, considering Articles 2 and 3, Chapter 53, A.C.A. 1939, as amended, and Article 14, Sections 1 and 8, Constitution of Arizona.

The pertinent provisions of Article 2, supra, entitled CORPORATIONS IN GENERAL, are quoted as follows:

"53-201. Classification and definition.--

(a) Corporations are either public or private. A public corporation is one that has for its object the government of a portion of the state. A private corporation is one organized for the purpose of religion, charity or benevolence, sociability or learning or for profit.

(b) Corporations are either domestic or foreign. A domestic corporation is a corporation formed under the laws of this state, and a foreign corporation includes every other corporation."

"53-202. 'Corporation' defined.--

The term 'corporation,' as used herein, shall include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or copartnerships."

Article 3, supra, entitled INCORPORATION AND DISSOLUTION OF PRIVATE CORPORATIONS, contains no provision exempting religious corporation or private corporations not for profit from its application nor does it contain a provision specifically including private corporations not for pecuniary profit.

Mrs. Edwina Eisenhart
Director of Incorporation

August 30, 1954
Page Two

Article 4, of Chapter 53, A.C.A. 1939 as amended, covers PRIVATE CORPORATIONS NOT FOR PECUNIARY PROFIT. Section 53-401, A.C.A. 1939, as amended, provides for religious and charitable corporations as follows:

"53-401. Religious, charitable, and scientific corporations.-- Corporations may be formed to acquire, hold and dispose of church or religious society property, for the benefit of religion, for works of charity and for public worship, and of property of scientific research institutions maintained solely for pure research and without hope of pecuniary gain or profit, in the manner hereinafter provided in this article."

Section 53-408, A.C.A. 1939, provides in part:

"53-408. Non-profit corporations - Formations - Amendments to articles.-- Any number of persons associated together for any purpose where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may in accordance with the rules, regulations or discipline of such association, elect directors, the number thereof not to be less than three (3), nor more than twenty-five (25), and may incorporate themselves as herein provided. The articles of incorporation shall conform to articles of incorporation of corporations in general, as near as may be, and in addition set forth the holding of the election for directors, and the time and place where the same was held.* * * Amendments shall be signed and acknowledged by the president and attested by the secretary of the corporation and shall be filed, recorded and published as articles of incorporation of private corporations are required to be, provided, however, that such publication may be dispensed (dispensed) with when each member signs a waiver of notice." (Emphasis Supplied)

It is apparent from reading the above quoted portions of Section 53-408, A.C.A. 1939, that the provisions of Article 3, supra, apply to the articles of incorporation of non-profit corporations such as religious corporations. If a corporation sole and a non-profit corporation were already covered by Article 3, supra, which provides for filing articles of incorporation and amended articles with the corporation commission, then we would of necessity be saying that the legislature did a useless thing in 1935 when it amended what is now Section 53-408, A.C.A. 1939, to require amendments to articles of incorporation of non-profit corporations to be filed and recorded and published as articles of incorporation of private corporations.

The following sections specifically apply to a corporation sole:

"53-402. Corporation sole.-- Any person in whom shall be vested the legal title to the property of any church or religious society, in conformity with its constitution, canons, rites or regulations, and of any scientific research institution maintained solely for pure research and without hope of pecuniary gain or profit, may make and subscribe written articles of incorporation, and acknowledge the same, and file a duplicate of such articles for record in the office of the county recorder of each county in which any real property of such corporation is situated, together with an impression of the seal which it shall adopt."

"53-403. Articles - Amendments.-- The articles of incorporation must contain the name of the corporation; the object of said corporation; the estimated value of the property at that time and the title of the person making such articles. Such corporation may amend its articles. The amendments shall be made by the corporation sole, and executed by the same person who executed the original articles, or by his successor in office, and shall be filed and recorded as required of the original articles."

"53-404. Powers of corporation sole.-- Upon making and filing for record articles of incorporation as herein provided, the person subscribing the same and his successor in office by the name or title specified in the articles, shall thereafter be deemed a corporation sole, with perpetual succession, and shall have power to acquire and possess, by gift, bequest, devise or purchase, and to hold property, and to sell, rent or otherwise dispose of the same, and to borrow money and to give written obligations therefor, and to secure the payment thereof by mortgage or other lien." (Emphasis Supplied)

It will be noted that a corporation sole is not a corporation as provided for by Sections 53-401 and 53-408, A.C.A. 1939, as amended, and that specific requirements for the filing of articles are prescribed by statute without mentioning the corporation commission or the general requirements of private corporations. The filing of articles of incorporation creates a corporation sole not a corporation as defined by statute.

The Constitution of Arizona, Article 14, defines a corporation as follows:

"§ 1. (Definition of word 'corporation')--
The term 'corporation', as used in this article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or copartnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons."

and further requires:

"§ 8. (Agents for service of process.)--
No domestic or foreign corporation shall do any business in this state without having filed its articles of incorporation or a certified copy thereof with the corporation commission, and without having one or more known places of business and an authorized agent, or agents, in the state upon whom process may be served. Suit may be maintained against a foreign corporation in the county where an agent of such corporation may be found, or in the county where the cause of action may arise."

A corporation sole, by its very definition is not an association or joint stock company. It is a person vested with title to the property of certain organizations and who has complied with the foregoing statutes on establishing a corporation sole. It is indicative that a corporation sole is not to be considered a corporation in the general sense, for nowhere in the statute is it granted general corporation powers but instead it is granted restricted power under section 53-404, A.C.A. 1939. The Supreme Court of Arizona has recognized as constitutional the conferring of certain corporate powers and privileges upon other than associations or joint stock companies. (BOARD OF REGENTS v. SULLIVAN, 45 Ariz. 245.) Since a corporation sole does not come within the constitutional definition of a corporation, it is not governed by Article 14, Section 8, of the Constitution, quoted above.

Although it is our opinion that a corporation sole need not file articles of incorporation with the corporation commission, it should be pointed out that this question has not been determined by our court and since the de jure and de facto existence of a corporation sole would depend upon a strict or substantial compliance with the law as finally determined by our Supreme Court, we suggest that if a corporation sole desires to file articles of incorporation, you should not refuse to file them.

Yours very truly,

JAMES E. HUNTER
Assistant to the
Attorney General

JEH:vlh

54-222L