

## CHAPTER 309

## SOCIAL AND CHARITABLE CORPORATIONS

**309.01 POWERS.**

A cemetery association, having sold lots as burial places, which have been appropriated for that purpose, is a trustee for the benefit of those who lawfully make use of such lots, and is in duty bound to account of its beneficiaries, the lot owners, for moneys received therefrom; and the directors to such cemetery association are not authorized to withhold money received for lots from the treasury of the corporation, or treat it as their own property. *Brown v Maplewood Cemetery*, 85 M 498, 89 NW 872.

To be a "public hospital" an institution (1) must be open to the public generally and (2) must be operated for the benefit of the public in contradistinction to being operated for the benefit of an individual, and this must be operated without private profit. A hospital is not exempt from taxation for a particular year in which there was no profit, if it was built, or organized and maintained with intent to make a profit. *State v Browning*, 192 M 25, 255 NW 254.

The hospital structure of the petitioner corporation, organized under sections 309.01 to 309.06 relating to social and charitable corporations, and which is operated as a public hospital without stockholders and without profit or private gain to its trustees, or officers, is exempt from taxation under Minnesota Constitution, Article 9, Section 1, and section 272.02. This decision is governed by *Village of Hibbing v Commissioner*, 217 M 528, 14 NW(2d) 923, and *State v Longstreet Foundation*, 198 M 263, 269 NW 469, and distinguished from *State v Willmar Hospital*, 212 M 38, 2 NW(2d) 564. *Fairmont Hospital v State*, 221 M 107, 21 NW(2d) 244.

The trustees of a charitable corporation are charged with the same fidelity in the performance of their duties as are the directors of a private business corporation. Legally there can be no such thing as a dummy or nominal board of directors. *Ray v Homewood Hospital*, 223 M 440, 27 NW(2d) 409.

County Historical Society; firemen's relief association, corporation for boys' farm for delinquent boys, may be incorporated under section 309.01. OAG Feb. 6, 1940 (11-B-13); OAG Feb. 2, 1944 (11-B-12); OAG July 13, 1944 (102).

If an educational corporation desires to obtain perpetual existence, and if it was originally incorporated in 1916, it must amend its articles, paying the required fees. OAG March 6, 1946 (92-A-12).

**309.02 CERTIFICATE; ANNUAL MEETINGS.**

Defendant corporation was organized under G.S. 1923, s. 7892 et seq., (section "309.01" et seq.). The statute does not authorize a corporation, organized as the defendant, to assess its stock or memberships; and in the absence of such a provision in its articles or a contract to that effect with its stockholders, it is without authority to assess. *Jackson v Minnetonka Country Club*, 166 M 323, 207 NW 632.

An application for membership in a country club, accepted by the latter, creates no contract because there is no mutuality of obligation. There is no evidence of either act, forbearance, or promise on the part of the club as consideration for the promise of the member. *Thorpe v Woodward*, 192 M 432, 250 NW 729.

An incorporated benevolent society is authorized to divide its membership into units, and, if permitted by its by-laws, a member of one unit may be a member of another unit. *Oison v Gopher State Society*, 203 M 267, 281 NW 43.

In the instant case the international and local union are unincorporated voluntary associations standing in the relation of parent or superior and subordinate

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organizations. Where a provision of the parent union authorizing its general president to appoint a trustee of a local union subject to its jurisdiction and discipline is silent with respect thereto, preferment of charges, notice, and hearing are implied as requirements of due process. *Union Local v Hotel Employees League*, 212 M 587, 4 NW(2d) 771.

Although organized under section 309.01 et seq., an educational corporation with capital stock must when filing an amendment to its article pay the fee prescribed by section 300.49. OAG March 6, 1946 (92-A-12).

Social, charitable and other like corporations cannot by amendment of their articles come under the provisions of sections 308.05 to 308.18 relating to cooperatives. OAG May 10, 1945 (93-A-2).

### 309.03 POWERS; COLLECTION OF ASSESSMENTS.

Trustees of a de facto organization should be elected by the association's membership and the usage or custom of the Norwegian Lutheran Conference to elect the trustees of the Augsburg Seminary although acquiesced in by the original incorporators for 20 years, time and effect of admitting to membership either the members of the conference or the members of the congregations belonging to the conference. *State ex rel v Oftedal*, 72 M 498, 75 NW 692.

An association cannot expel a member without an opportunity to be heard particularly where his property rights will be affected by his expulsion, as in this case where he paid a \$100 membership fee. The rule holds good where cause for expulsion is conceded but the expulsion is discretionary. *Strong v Minneapolis Automobile Ass'n*. 151 M 406, 186 NW 800.

A bar association organized as a social and charitable association under sections 309.01 et seq., is doing business in the state within the meaning of the corrupt election practices act; but the expenditure by a bar association of money to defray the expense of a bar plebiscite and furnishing the services of its officers in managing the same and announcing the results to the public does not constitute a payment or contribution of money, property, or services to a political party, committee, or individual for political purposes. *LaBelle v Hennepin County Bar*, 206 M 290, 288 NW 788.

Paid up members of a social or charitable corporation may issue votable proxies. OAG Feb. 14, 1945 (102).

### 309.08 CORPORATIONS TO ADMINISTER CHARITIES; FORMATION; REQUISITES.

The word "charity" means a gift without any hope on part of donor, based on legal or moral right, of any material benefits being realized therefrom, whether or not prompted by ulterior motives; whatever is bestowed gratuitously on the needy or suffering for their relief; an eleemosynary foundation or institution; an institution founded by a gift and intended for use of public, as a hospital, library, school. A voluntary association for mutual benefit of its members is not a public "charitable institution." *Smith v Reynolds*, 43 F. Supp. 510.

### 309.09 POWERS OF CORPORATION; VISITORIAL RIGHT; CONSOLIDATION.

St. Mary's Hospital at Rochester is a public hospital, and its personal property and money and credits are exempt from taxation under Minnesota Constitution, Article 9, Section 1, and section 272.02. *State v Academy of our Lady of Lourdes*, 221 M 227, 21 NW(2d) 617.

Action against a charitable corporation to enjoin a nuisance. 7 MLR 57.

Legal effect of gifts to charitable corporations. 23 MLR 670.

### 309.18 MERGER OR CONSOLIDATION.

HISTORY. 1947 c. 196 s. 1.

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## **309.19 PROCEDURE.**

HISTORY. 1947 c. 196 s. 2.

## **309.20 NEW CORPORATE IDENTITY.**

HISTORY. 1947 c. 196 s. 3.