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Corporations--Effect of Proposed Stock Voting Amendment

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(3) Any element of control of the policy in the hands of the taxpayer or noncontrol by the corporation may give rise to an immediate taxable benefit to the taxpayer.

The decision in the principal case has received a boost by a subsequent First Circuit holding under a somewhat similar factual situation. *Prunier v. Commissioner,* 5 CCH 1957 Stand. Fed. Tax Rep. (57-2 U.S.T.C.) ¶ 10,015 (1st Cir. Nov. 8, 1957). The court regarded as a settled ruling "that where a corporation is the beneficiary and owner of a policy of insurance on the life of an employee or stockholder, the payment of premiums by the corporation does not constitute income to the insured individual," and cites the principal case as authority. *Prunier v. Commissioner, supra* at 58,548. However, *Sanders v. Fox,* 149 F. Supp. 942 (D.C. Utah 1957), remains contra to the principal case.

The recent decisions in the *Casale* and *Prunier* cases seem to indicate a trend of the circuits; where the corporation owns, controls, and benefits from the policy involved, there is no immediate taxable benefit to the stockholder concerned.

J. S. T.

LEGISLATION

CORPORATIONS—EFFECT OF PROPOSED STOCK VOTING AMENDMENT ON OUTSTANDING STOCK.—West Virginia voters in the 1958 general election will be asked to approve an amendment to the state constitution requiring the legislature to provide by law that every corporation shall have the power to issue one or more classes of stock with full, limited or no voting rights, and that holders of voting shares may vote them cumulatively for directors. W. Va. Acts 1957, c. 18, § 1. This amendment would replace the present provision that the legislature shall provide by law that every stockholder shall have the right to vote the number of shares owned by him cumulatively for directors. W. VA. CONST. art. XI, § 4.

In executing this constitutional requirement, the legislature provided that stockholders could cumulate shares entitled to vote. W. VA. CODE c. 31, art. 1, § 66 (Michie 1955). It also empowered corporations to issue stock with full, limited or no voting power. W. VA. CODE c. 31, art. 1, § 22 (Michie 1955). The possible unconstitutionality of these statutes had long been recognized. Note,

40 W. VA. L.Q. 97 (1933); see Note, 39 W. VA. L.Q. 345 (1933). However, neither was ever challenged until recently, when both were declared unconstitutional to the extent that they authorized issuance of nonvoting stock. *State ex rel. Dewey Portland Cement Co. v. O'Brien,* 96 S.E.2d 171 (W. Va. 1956).

To permit future issuance of nonvoting stock, and presumably, to permit ratification of outstanding nonvoting stock now carrying court-awarded voting rights, the legislature initiated the proposed constitutional amendment. Note, 59 W. VA. L. REV. 374, 379 (1957). However, if adopted as proposed, the amendment would raise a significant question: Would it support legislation impairing the court-given right to vote supposed nonvoting stock, and if so, would such legislation conflict with the federal and state constitutions?

The amendment appears to be entirely prospective in effect: "Shall provide"; "shall have power to issue." W. Va. Acts 1957, c. 18, § 1. "Shall" denotes future. WEBSTER, NEW INTERNATIONAL DICTIONARY (2d ed. 1944). A constitutional provision should be given only a prospective construction unless some retrospective intent is clearly expressed. *E.g., Goff v. Hunt,* 6 N.J. 600, 80 A.2d 104 (1951). This is especially true of an attempt to ratify an unconstitutional statute. *Northern Wasco County Peoples Util. Dist. v. Wasco County,* 305 P.2d 766 (Ore. 1957). On the other hand, there is no stigma attached to retrospective legislation if otherwise valid, and it has been held that what the legislature may authorize, it may ratify, if it could authorize at the time of ratification. *Charlotte Harbor & No. Ry. v. Welles,* 260 U.S. 8 (1922). A strained construction of the amendment might justify legislative ratification of outstanding nonvoting stock on the ground that retrospective intent is implied by the requirement that *every* corporation shall have the power to issue nonvoting stock. W. Va. Acts 1957, c. 18, § 1.

If the objections to retrospective legislation can be overcome, there remains the problem of constitutionality. Would deprivation of voting rights impair the obligations of contracts? U.S. CONST. art. I, § 10, cl. 1; W. VA. CONST. art. III, § 4. Would such action deprive persons of their property without due process of law? U.S. CONST. amend. XIV, § 1; W. VA. CONST. art. III, § 10.

A corporation charter is a contract between and among the state, the corporation, and the stockholders. *United States v. Knox,*

102 U.S. 422 (1880); *Lawson v. Household Finance Corp.*, 17 Del. Ch. 1, 147 Atl. 312 (Ch. 1929). The state may, however, amend or repeal a charter if it has reserved the right to do so. *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 712 (1819) (concurring opinion). This right has been reserved by West Virginia. W. VA. CODE c. 31, art. 1, § 8 (Michie 1955). Such a reservation is a condition of the charter. *Tabler v. Higginbotham*, 110 W. Va. 9, 156 S.E. 751 (1931); *State v. St. Marys Franco-American Petroleum Co.*, 58 W. Va. 108, 51 S.E. 865 (1905). Reasonable and nondiscriminatory exercise of the right to amend does not deprive a corporation of its property without due process of law nor its liberty to contract. *St. Mary's Franco-American Petroleum Co. v. West Virginia*, 203 U.S. 183 (1906). The state's reserved right to amend should be held a sufficient basis to justify impairment of voting rights without violation of the contract clauses.

That restriction of voting rights may be considered a deprivation of property creates a more difficult problem. The right of a shareholder to vote his stock is a property interest. *Brown v. McLanahan*, 148 F.2d 703 (4th Cir. 1945). No person shall be deprived of his property without due process of law. U.S. CONST. amend. XIV, § 1; W. VA. CONST. art. III, § 10; *Coombes v. Getz*, 285 U.S. 434 (1932). Since divestment of voting rights is divestment of an essential attribute of property, the stockholder's consent is generally required. *E.g., Lord v. Equitable Life Assurance Soc'y*, 194 N.Y. 212, 87 N.E. 443 (1909); 7 FLETCHER, PRIVATE CORPORATIONS § 3697 (perm. ed. rev. 1931). However, the legislature has been upheld in divesting preferred stock of its voting power, on the ground that the right to vote concerns only the internal management of a corporation and is not such a property right as to be exempt from the reserved right to amend. *Morris v. American Pub. Util. Co.*, 14 Del. Ch. 136, 122 Atl. 696 (Ch. 1923); see *Randle v. Winona Coal Co.*, 206 Ala. 254, 260, 89 So. 790, 796 (1921) (*semble*). Cumulative voting provisions, which may restrict the voting powers of majority stockholders, have been successfully imposed on existing corporations under the power to amend. *Looker v. Maynard*, 179 U.S. 46 (1900); *Cross v. West Virginia Cent. & P. Ry.*, 35 W. Va. 174, 12 S.E. 1071 (1891). Double liability has been imposed on stockholders of pre-existing banks, again under the power to amend. *Lamb v. Strother*, 118 W. Va. 257, 189 S.E. 865 (1937). These deprivations of property are at least analogous to the problem, and indicate that legislative exer-

cise of the reserved power to amend might well be considered to be due process.

Denial of the state's reserved right to amend charters with respect to voting rights has been criticized on the ground that stockholders have consented to amendment by subscribing to the charter. Note, 37 CORNELL L.Q. 768 (1952). In the present situation, such an argument is even stronger: Here the affected stockholders purchased what they believed to be nonvoting stock; the award of voting rights by the court gave them property interest without consideration, and in addition, impaired the property interest of those stockholders who gave consideration for voting rights. Might not the holders of court-bestowed voting rights be estopped from denying the validity of legislation impairing such rights?

Whether or not the proposed amendment could support legislation divesting court-given voting power is open to some question; but it is believed that effective argument for the validity of such legislation is possible. Legislation to this end would have the virtue of restoring all parties to the position they originally bargained for, and of preventing discrimination against those who believed they were acquiring exclusive voting rights. If legislation to this end can not be upheld, future constitutional amendment for the same purpose should be considered.

R. G. D.

DESCENT—STATUTE AMENDED—ADVANCES HUSBAND AND WIFE.—The West Virginia Legislature amended subsections (b), (c) and (d) of W. VA. CODE c. 42, art. 1, § 1 (Michie Supp. 1957) to read as follows:

"(b) If there be no child, nor descendant of any child, then the whole shall go to the wife or husband, as the case may be;

"(c) If there be no child, nor descendant of any child, nor wife, nor husband, then one moiety each to the mother and father; or if there be no child; nor descendent of any child, nor wife, nor husband, nor mother, then the whole shall go to the father; or if there be no child, nor descendant of any child, nor wife, nor husband, nor father, then the whole shall go to the mother;