

TITLE XVII.

Corporations.

CHAPTER 180.

DOMESTIC CORPORATIONS.

ORGANIZATION AND POWERS.

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180.01 Who may incorporate; purposes of incorporation. Three or more adult residents of this state may form a corporation in the manner provided in this chapter for any lawful business or purpose whatever, except banking, insurance and building or operating public railroads, but subject always to provisions elsewhere in the statutes relating to the organization of specified kinds or classes of corporations.

Note: Section 1771, Stats. 1898, having specifically provided for the organization of commercial cemetery corporations, and the 1927 revision, not specifying the particular purposes for which corporations may be organized, but providing that with certain exceptions they may be formed thereunder for any lawful business or purpose, the rule applies that in cases of ambiguity in statutes arising from the enactment of a revisor's bill the presumption is that no radical change in the law was intended; especially in view of the revisor's notes. *Hillier v. Lake View Memorial Park*, 208 W 614, 243 NW 406.

180.02 Articles. (1) **CONTENTS.** The persons desiring to form a corporation shall sign and acknowledge articles containing:

(a) A declaration that they associate to form a corporation under these statutes, and of the business or purposes thereof.

(b) The name of such corporation, but such name shall not contain the names of individuals in the manner in which they are ordinarily used in partnership or business names, and shall be such as to distinguish it from any other domestic corporation and from any corporation licensed in this state. In case of reorganization, the name of the old corporation may be used.

(c) The location of such corporation in some city, village or town in the state.

(d) The capital stock, if any, the number of shares and the amount of each share.

(e) The designation of general officers and the number of directors, which shall not be less than three.

(f) The principal duties of each general officer.

(g) The method and conditions upon which members shall be accepted, discharged or expelled; and in stock corporations, persons holding stock, according to the regulations of the corporation, and they only, shall be members.

(h) Such other provisions, not inconsistent with law, as they may deem proper to be therein inserted.

(2) **FILING AND RECORDING.** The original articles or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the secretary of state.

A like verified copy and certificate of the secretary of state, showing the date when such articles were filed by the secretary of state, within thirty days of such filing, shall be recorded by the register of deeds of the county in which such corporation is located, and no corporation shall, until such articles be left for record, have legal existence. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such copy was recorded, and shall be entitled to a fee of twenty-five cents therefore to be paid by the person presenting such papers for record. Upon the receipt of such certificate the secretary of state shall issue a certificate of incorporation.

(3) FILING FEES. Filing fees shall be paid to the secretary of state as follows:

(a) By corporations organized for the manufacture of beet sugar, butter, cheese, or other dairy products, or for the business of preparing for market, storing, and selling products of the farms of members of the corporations, ten dollars for the articles and five dollars for each amendment thereof.

(b) By every other corporation, except as is otherwise provided, twenty-five dollars for the articles and ten dollars for each amendment thereof, and one dollar for each one thousand dollars of its authorized capital stock in excess of twenty-five thousand dollars.

(c) By any corporation organized without capital stock, or exclusively for educational, benevolent, charitable or reformatory purposes, the articles of which provide that no dividend or pecuniary profits shall be declared or paid to the members thereof, five dollars for the articles and two dollars for each amendment. No filing fee is required to be paid by a housing corporation formed under the provisions of section 180.04. [1935 c. 142, 143; 1939 c. 97]

Note: Provisions in the articles of incorporation and the by-laws requiring the stockholders to offer their stock to remaining stockholders before sale to outsiders are valid, but such provisions do not apply to a sale by one stockholder to another. *Rychwalski v. Baranowski*, 205 W 193, 236 NW 131.

The general corporation laws of the state form a part of the corporate charter of a corporation organized thereunder, and therefore constitute a part of the contract

between the corporation and its stockholders. *Hull v. Pfister & Vogel Leather Co.*, 235 W 653, 294 NW 18.

Patronage dividend cannot be distributed to preferred stockholders by corporation organized under provisions of chapter 180. 22 Atty. Gen. 167.

Proposed article providing that board of directors shall consist of not less than..... nor more than..... does not conform to requirements of (1) (c). 29 Atty. Gen. 35.

180.03 Executors or trustees may form corporation. The executors or trustees under any will or one or more of such executors or trustees who are authorized by the will to organize a corporation for any of the purposes authorized by this chapter may, individually or as executors or trustees, or together with the legatees mentioned in such will, or one or more of such executors, trustees or legatees, associating with him or them such other persons as may be necessary, incorporate for the purpose of carrying out the intentions of the testator, and said executors, trustees or legatees, or two or more of them, may subscribe to the capital stock of such corporation to the amount of the value of the property mentioned or referred to in the will for such purpose, and convey such property to the corporation in payment of the stock subscribed, without authority from any court.

180.04 Housing corporations. (1) The articles of a corporation formed for the purpose of acquiring land, platting the same, erecting houses thereon and otherwise improving and developing the same, shall state that the purpose is to form a housing corporation under these statutes. The articles shall further provide for the issuance of preferred stock, and for the payment of dividends thereon, at a specified rate, before dividends are paid upon common stock, and for the accumulation of such dividends. No preference shall be given to such preferred stock in the distribution of the corporate assets other than profits.

(2) Such corporation shall have the powers enumerated in section 182.01 and subsection (2) of section 180.11, except as herein provided otherwise.

(3) Such corporation shall have the following additional powers:

(a) To acquire land and plat the same, laying out streets, lots, playgrounds and such other subdivisions as it may deem best; but no plat shall be valid until approved by the public land commission or city planning commission of the city in which the property of such corporation is located, or if such land be located within three miles of a city of the first class, by the public land commission or city planning commission of such city of the first class, if there be a public land commission or city planning commission in such city, and until accepted by the common council of the city within which such land is located, or if within three miles of a city of the first class, until accepted by the common council of such city of the first class; and no land shall be acquired by the corporation in any city or within three miles from the boundary of a city having a health department or health officer, unless and until the location of such land has been approved by said health department or health officer as a healthful location.

(b) To improve and develop said land for residential purposes; but no single dwelling shall be erected, the cost of which shall exceed ten thousand dollars, and sufficient ground space must be provided to furnish adequate air and light to the tenants thereof.

(c) To lease for indefinite periods parcels of land owned by it together with improvements thereon.

(d) To do all such other things as are reasonably necessary and proper to carry out the powers of said corporation, not inconsistent with the provisions of this section.

(e) To hold its first meeting and transact business with its members at any time after one-fourth of its capital stock shall have been subscribed; and may transact business with others than its members when one-fourth of its capital stock shall have been duly subscribed and one-tenth of its authorized capital stock actually paid in.

(4) No land shall be sold by the corporation, except land not necessary or desirable for the purposes of the corporation, and except improved real estate where the entire purchase price is paid in cash, and except when acting pursuant to the provisions of subsection (11) of this section, and then only by a vote of three-fourths of the stock of the corporation then outstanding.

(5) No lease of any land or buildings shall be made except to a stockholder for his use, and no tenant shall hold stock beyond the value of the premises occupied by him, except that single buildings designed, built and fit for more than one family may be leased in their entirety to a stockholder, who may sublease the portion not occupied by himself or his family to any person; but leases for an indefinite period may be made to American soldiers, sailors or marines of the world war, who are not stockholders. The corporation may also lease land to the city or county for any use consistent with the residential district, or to a private individual or association of the corporation, for a use beneficial to the tenants of said land. No lease shall be terminated by the corporation without the consent of the lessee, except for violation of the terms of the lease, and then only in the manner provided by law. A lease may be terminated at any time by a tenant, except that the corporation may require not to exceed ninety days' notice thereof. At the termination of a lease of a stockholder, the corporation shall cancel his stock, and shall be liable to him for the amount paid thereon, less any lawful claims of the corporation against him. If the corporation is unable to sell said stock at the termination of the lease, it shall give him, in lieu of said stock, its promissory note for the net amount due him, payable on or before one year from the date thereof, with interest at the rate of five per cent per annum. Such stock shall be resold for not less than par before any unissued stock is sold, and as soon as sold, there shall be paid to the former owner thereof the amount due him from the corporation; provided, the corporation may pay the amount due either at the time of the termination of the lease or at any other time before the expiration of said year, whether said stock has been sold or not.

(6) Stock may be issued and leases made to husband and wife, and to the survivor of them, in which event title thereto shall descend the same as in like conveyances of real property; otherwise title to the stock and lease shall descend to the persons to whom a homestead of such stockholder would descend. The interest of a tenant in such lease and stock shall be exempt from execution to the same extent as a homestead in real estate.

(7) Stock shall be sold upon such terms and conditions as may be provided in the articles or by-laws of the corporation. The provisions of section 182.19 shall not apply to corporations organized under this section, but no dividends shall be declared until a surplus fund shall have been created equal to two per cent of the paid-in preferred stock and paid-in common stock, nor shall any dividends ever be declared which will impair the capital or such surplus, and no dividend exceeding five per cent per annum shall be paid except to a tenant stockholder. There shall also be annually set aside ten per cent of the year's profits for the purpose of retiring preferred stock.

(8) The common council of any city and the board of supervisors of any county may subscribe for preferred stock of any such corporation whose land, owned or to be acquired, shall be within the limits of such city or county, and in case of a city of the first class, within a distance of three miles beyond the boundaries of such city.

(9) The stockholders shall be entitled to one vote for each share of stock, common or preferred, held by them, as shown by the books of the company. The common council of the city and the board of supervisors of the county shall designate some person to vote their shares; and the person so designated shall be eligible as a director.

(10) The directors shall receive no compensation until the surplus fund of two per cent of the capital has been set aside, and until the dividends on preferred stock have been paid, and at no time shall the compensation of directors exceed five hundred dollars each per annum.

(11) When the land shall have been platted, the directors shall fix the value of the several lots and parcels of land to be used for residential purposes, and thereafter in computing the rental to be paid therefor a valuation not exceeding that so fixed shall be used.

(12) Outstanding notes or paid-up preferred or common stock may be exchanged for land contracts, mortgages or bonds of such corporation. Exchanged stock shall be canceled.

(13) Any such corporation may be dissolved in the manner provided in chapter 181, except that the resolution providing for the dissolution must be adopted by at least a majority vote of all of the stock, both common and preferred, and that after such vote the affairs of the corporation shall be placed in the hands of a trustee elected by the board of directors. Said trustees shall sell all assets on land contract or otherwise. Said corporation shall have power to pass free legal title to any purchaser or grantee of any lands, and any assignment or sale of any lands by such trustee shall pass the title of such corporation in such lands.

Note: A housing corporation organized under this statute is not a building and loan association. Where such housing corporation leases dwellings to tenant stockholders for monthly payments applied as credits on common stock, after deducting expenses and fix return on preferred stock, is exempt from federal income taxation as a nonprofit civic organization. *Garden H. Co. v. Commissioner of Internal Revenue*, 64 F (2d) 593.

180.05 Water reservoirs. The articles of a corporation organized in whole or in part to establish, maintain or operate a system of water reservoirs for the purpose of regulating the flow of any river in the state, shall guarantee to every owner of water power located below such reservoir system, who does not already own his quota of stock, the right at any time to purchase from the corporation at par such a pro rata share of all of the capital stock of the corporation as the cubic foot storage fall of the water power of such owner shall be of the sum of the cubic foot storage falls of all water powers benefited by such reservoir system. The cubic foot storage fall of any water power is the product of the height expressed in feet of the head obtained or obtainable by the dam at said power, multiplied by the storage capacity expressed in cubic feet of the reservoirs tributary to such power. The articles shall never be amended so as to withdraw said guaranty.

180.06 Temporary control; liability of promoters; abandonment. (1) Until the directors or trustees shall be elected the signers of the articles of organization shall have direction of the affairs of the corporation and shall make such rules as may be necessary for perfecting its organization, accepting members or regulating the subscription of the capital stock, including the price of nonpar stock.

(2) In nonstock corporations the first meeting shall be held at such time and place as a majority of the signers of the articles may determine, notice whereof shall be given as provided in subsection (3).

(3) In stock corporations the first meeting may be held at any time after one-half the capital stock shall have been subscribed; in the case of corporations having stock without par value, the percentage of stock subscribed for shall be determined as provided in subsection (4) of this section; and may be called by two signers of the articles, at such time and place as they shall appoint, by giving ten days' written notice thereof to each subscriber, or by publishing notice thereof once each week for at least two weeks before such meeting in some newspaper published at or nearest to the location of the corporation; or such meeting may be held without previous notice if all the subscribers for voting stock be present in person or by proxy.

(4) The corporation shall not transact business with any others than its members until one-half of its capital stock shall have been subscribed and one-fifth of its authorized capital actually paid in. If the articles authorize only stock without par value, the corporation shall not transact business with any others than its members until at least one-half of the number of authorized shares shall have been subscribed and one-fifth of the number of authorized shares actually paid in. If the articles authorized both par value and nonpar value stock, the corporation shall not transact business with others than its members until at least one-half of the authorized par value of the par value stock and one-half of the authorized number of shares of nonpar value stock shall have been subscribed and one-fifth of the authorized par value of the par value stock and one-fifth of the authorized number of shares of nonpar value stock shall have actually been paid in. If any obligation shall be contracted in violation hereof, the corporation offending shall have no right of action thereon; but the signer or signers of the articles and the subscriber or subscribers for stock transacting such business or authorizing the same, or having knowledge thereof, consenting to the incurring of any debt or liability, as well as the stockholders then existing, shall be personally liable upon the same.

(5) The signers of the articles or the survivors of them may abandon the organization and revoke the articles or amend the same at any time before fifty per cent of the stock has been subscribed and twenty per cent of its capital stock paid in, by signing and acknowledging a written revocation of, or amendment to the original articles of organization, and filing and recording the same or verified copies thereof, in the manner that articles and copies are required to be filed and recorded; and the register of deeds shall note on the margin of the record of the articles of incorporation the volume and page where such revocation or amendment is recorded, and shall forthwith transmit to the secretary of state a

certificate stating the time when such revocation or amendment was recorded, and shall be entitled to a fee of twenty-five cents therefor.

(6) The revocation shall not relieve such corporation or any signer or subscriber for stock or any stockholder from any liability. Any subscriber may be released from his subscription upon application within ten days after notice of an amendment of the articles as herein provided. Any amendment of articles by incorporators prior to June 14, 1923, pursuant to and in substantial compliance with this section, shall be and the same is hereby validated. [1935 c. 142]

Note: Where no rights of creditors of corporation were involved in action on stock subscription contracts, receiver for corporation had no greater right against subscriber than corporation had. *Schwemer v. Fry*, 212 W 88, 249 NW 62.

A subscriber of corporate stock became a stockholder in the corporation when he paid in an agreed amount and gave his note for the balance of the purchase price, and he was bound to pay the balance due on the subscription as evidenced by the note. *Marshall v. Wittig*, 213 W 374, 251 NW 439.

A corporation is completely organized when its articles of incorporation are signed

and filed and the certificate of organization is issued. A creditor who sues the corporation is not estopped from suing the stockholders individually on their statutory liability for the corporation's doing business before fifty per cent of its capital stock is subscribed or less than twenty per cent is paid in. [*Kaestner v. Kuechle*, 194 W 72, overruled.] *Bank of Verona v. Stewart*, 223 W 577, 270 NW 534.

Signers of articles of nonstock corporation organized under general corporation law or as co-operative association under chapter 185 may not revoke or amend articles under 180.06 (5). 28 Atty. Gen. 242.

180.07 Amending articles; filing and record; change of name. (1) Any corporation organized for any of the purposes authorized by this chapter, may, by a vote of two-thirds of all the stock outstanding, and entitled to vote, or one-half of the members of a corporation without stock, unless a greater vote shall be required in its articles, amend its articles so as to modify or enlarge its business or purposes, change its name or location, increase or diminish its capital stock, change its officers or its directors, or provide anything which might have been originally provided in such articles, but no corporation without stock shall change substantially the original purposes of its organization. The amendment shall be adopted only in accordance with the articles, if a mode of amending the same shall have been therein prescribed.

(2) Duplicate copies of such amendment, with a certificate thereto affixed, signed by the president and secretary, or if none, the correspondent officers, and sealed with the corporate seal, if there be any, stating the fact and date of adoption, and, if a stock corporation, the total number of shares voting in favor of such amendment, and, if a nonstock corporation, the total number of members and the total vote in favor of such amendment, and that such copy is a true copy of the original, shall be filed and recorded in the time, manner and place required for filing and recording original articles, and in case of failure so to do, such officers shall forfeit twenty-five dollars.

(3) The register of deeds shall note on the margin of the record of the original articles, the volume and page where such amendment is recorded, and no amendment shall be of effect until so filed and recorded. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such amendment was recorded, and shall be entitled to a fee of twenty-five cents therefor. Upon receipt of such certificate the secretary of state shall issue a certificate of amendment.

(4) Whenever the corporate name shall be changed, the secretary of the corporation shall publish a notice thereof in a newspaper published at or nearest to the location of such corporation once each week for three weeks, and if he shall fail for two months so to do shall forfeit twenty-five dollars. No change of location of any such corporation, if beyond the limits of the county, shall be valid until the articles of organization and all amendments or certified copies thereof shall have been recorded in the office of the register of deeds of the county to which the same shall be changed.

Note: Fundamental changes in a corporation's purposes cannot be made by amendment over the dissent of a single stockholder. The majority stockholders cannot turn over to themselves corporate property or advantages to the detriment or fraud of the corporation or of the minority. But the majority stockholders and the board of directors are supreme within the limits of honest administration and discretion. *Martin O. Co. v. Fruit Growers' C. Co.*, 203 W 97, 233 NW 603.

A stockholder cannot legally object to amendment made to the articles if made in accordance with the articles or with the statutes. *Johnson v. Bradley Knitting Co.*, 228 W 566, 280 NW 688.

An amendment to corporate articles providing that the number of directors may vary, depending upon certain contingencies, is permissible. 28 Atty. Gen. 439.

Under existing statutes corporation may, by vote of three-fourths of its common and of three-fourths of its preferred stock, amend its articles so as to accomplish following results provided amendment is not made to defraud minority: (1) reduce par value of preferred stock issue from \$100 to \$25 per share; (2) eliminate preferred stock issue, giving holders debentures instead; (3) eliminate obligation of accrued dividends which have not been declared. 31 Atty. Gen. 354.

180.08 Annual reports; forfeiture; reinstatement. (1) Every corporation organized for profit, under this chapter, shall annually, between the first day of January and of April, file with the secretary of state, a report signed by the president, secretary,

treasurer or general manager, or if the corporation is in the hands of an assignee or receiver, by such assignee or receiver, as of January first preceding, which shall state:

- (a) The name of such corporation and location, giving street and number.
- (b) The name and address of the officers and directors of such corporation, giving street and number.
- (c) The amount of authorized capital stock.
- (d) The amount of capital stock actually paid in.
- (e) Whether such corporation was engaged in active business during preceding year.
- (f) Nature of business transacted during preceding year.
- (g) In what states such corporation is licensed to transact business.

(2) In case said report is not filed by July first, the secretary of state shall publish, once a week for three successive weeks, a notice of such failure, in a newspaper published at or near the location of said corporation; and forward a copy of said notice to the register of deeds of the county in which the corporation is located, and the register shall promptly post the notice in his office. Such corporation shall be allowed to file its said annual report prior to May first on payment of a forfeit of five dollars and thereafter but prior to publication on payment of a forfeit of ten dollars, and after publication on payment of a forfeit of ten dollars and of the costs of publication. In case said report is not filed by the following January, the corporate rights and privileges granted to such corporation shall be declared forfeited by the secretary of state, and he shall enter such forfeiture on the records of his department.

(3) The cost of publishing the notice shall be paid out of the state treasury and shall be at the same rate as legal notices.

(4) The secretary of state shall, during each December, forward report blanks to every corporation required to make an annual report.

(5) Whenever any change is made in the officers of such corporation, the names and addresses of the officers elected shall be filed with the secretary of state within twenty days after such change.

(6) The secretary of state may rescind the forfeiture on payment of twenty-five dollars and presentation of a statement signed by the president and secretary of the corporation to the effect that such corporation has at no time suspended its ordinary business; or that the corporation at the time of the forfeiture held title to or transferable interests in real estate. The secretary of state may demand such further proof as he may deem necessary. [1935 c. 225; 1939 c. 134]

Note: The failure of a corporation to file its annual report does not work a forfeiture of corporate rights and privileges ipso facto. *Lindsley v. Farmers Exch. Inv. Co.*, 223 W 565, 271 NW 364.

Secretary of state may rescind forfeiture of corporate rights under (6) only upon payment of twenty-five dollar fee provided for therein. 27 Atty. Gen. 475.

180.09 [Repealed by 1927 c. 534 s. 9]

180.10 Amendments increasing capital; affidavit of amount subscribed and paid.

No amendment to the articles of any corporation, increasing the capital stock, shall be filed unless accompanied by the affidavit of the president and secretary that one-half of the capital stock, including the proposed increase, has been duly subscribed and one-fifth of the authorized capital actually paid in. In the case of corporations having stock without par value the percentage of stock subscribed for and paid in shall be determined as provided in subsection (4) of section 180.06.

Note: Requirements of (4), relating to paid in and subscribed capital stock are initial requirements only and constitute conditions precedent to commencement of business by corporation. Treasury stock purchased by corporation may be used in computing

subscribed or paid in stock under 180.10, where corporation is not prohibited by its charter from purchasing its own stock and where such purchase is made in good faith without intent to injure creditors or stockholders. 26 Atty. Gen. 338.

180.11 Corporate powers. (1) **RIGHTS OF PERSONS.** Every corporation may take and acquire by lease, purchase, sale, conveyance or assignment and thereafter own, hold and enjoy any right, privilege or franchise granted to any person by any law of this state where such right, privilege or franchise would be in direct aid of the business of such corporation.

(2) **TRANSFERS OF PROPERTY.** Every corporation may, by a vote of a majority of the stock entitled to vote, sell and convey or authorize to be conveyed, all or any portion of the property owned by it, or mortgage or lease any such property whenever it shall be necessary for its business or the protection or benefit of its property.

(3) **SAME; EXCEPTIONS.** But any corporation organized to deal in real property or in fixtures, improvements or chattels real, or to mortgage, pledge or dispose of the same in any manner whatsoever, may sell, mortgage, pledge or otherwise dispose of the same by instruments executed in the manner provided by section 235.19 or in such manner as shall be provided in the articles of incorporation, without further authorization by the members of any such corporation.

180.12 Special power to transfer property of nonstock corporation. (1) Whenever the board of directors of any domestic corporation organized without capital stock shall determine that a sale or mortgaging of the whole or any part of its property is desirable, and that by reason of the removal, nonresidence of a great number of its members, or the loss of its records of membership, or other cause, it is impossible to call or hold any regular meeting at which a majority of the members can be represented in person or by proxy, the said board may cause a verified petition to be made in behalf of said corporation and presented to the circuit judge of the county in which said corporation shall have its location. Such petition shall set forth the date of the organization and the purpose of said corporation, the nature and extent of its property, reasons for the sale or mortgaging of the whole or any part thereof, the facts preventing the calling or holding of a meeting of a majority of its members and such other matters as may be deemed material. Upon presentation thereof the circuit judge shall by order fix a time and place for a meeting of the members of such corporation and prescribe the time and manner of giving, and contents of a notice of said meeting, and direct the publication thereof in a newspaper designated in said order as the one most likely to give general notice of such meeting.

(2) A majority of the members present at any meeting so called shall have power to sell, convey or mortgage or authorize to be sold, conveyed or mortgaged the whole or any part of the property described in such petition.

(3) If such sale or mortgaging be approved or authorized, the officers of said corporation shall cause the petition, the order of the judge, proof by affidavit of the giving of notice of said meeting as required by said order and a certified copy of the minutes of the said meeting to be promptly filed in the office of the clerk of the circuit court of said county upon payment to said clerk of the fees properly chargeable in a special proceeding. Upon such filing, such property may be conveyed or mortgaged with the same right and authority as if such sale or mortgaging had been authorized by a majority in number of all members of said corporation. [1933 c. 80]

180.13 Directors to manage. (1) The property, affairs and business of every such corporation shall be under the care of and be managed by a board of directors who shall be chosen annually by the stockholders or members from among their number, at such time and place as shall be provided by the articles of organization or the by-laws, and shall hold one year and until their respective successors are chosen, except that when classified by the articles of organization they may be elected and hold accordingly. The directors shall choose one of their number president and such other officers as the corporate articles and by-laws require, for such term as shall be prescribed thereby, but in nonstock corporations the officers may be elected by the members if the articles so provide; and may fill any vacancy in their board, happening after any regular annual election, until the next succeeding election.

(2) If authorized by the by-laws of the corporation, the board of directors may elect an executive committee to consist of not less than 3 directors, which committee may to the extent provided in the by-laws have and exercise the powers of the board of directors when not in session, except action in respect of dividends to stockholders, election of officers, or the filling of vacancies in the board of directors or executive committee. [1939 c. 97; 1943 c. 255]

Note: Whatever was done by subordinate officers, agents or employes of the investment corporation in the usual and ordinary course of its business or affairs, after the directors had knowledge thereof, or were chargeable with such knowledge, may be deemed to have been done with the approval or at the direction of the board of directors, either expressly or by necessary implication by way of acquiescence. *State ex rel. Kropf v. Gilbert*, 213 W 196, 251 NW 478.

By-law of corporation prohibiting payment of compensation for services of any officer or employe unless first consented to by owners of three-fourths of corporate stock is held void as conflicting with the statute vesting care and management of

property, affairs and business of corporation in board of directors. Director or other fiduciary officer of corporation presumptively serves without compensation, and he is entitled to compensation for performing usual and ordinary duties of his office only when there is a valid express agreement therefor; but he may be entitled to compensation, under an implied contract, where services clearly outside his ordinary duties as director or officer are performed under circumstances showing that it was well understood by proper corporate officers as well as himself that services were to be paid for. *Security S. & T. Co. v. Coos Bay L. & C. Co.*, 219 W 647, 263 NW 187.

180.135 Public utility corporation directors; not to delegate duty to manage; removal by commission. (1) The directors of corporations which are public utilities shall not, directly or indirectly, delegate or in any manner, temporarily or permanently, relinquish or surrender their duty to manage and direct the stock, property, affairs and business of such corporation.

(2) Any director violating the provisions of this section may be removed by the public service commission, after notice and hearing. When a director of a public utility shall

be removed by the commission he shall be ineligible for a period of two years to serve as a director of said public utility. [1931 c. 183 s. 3; 1931 c. 475 s. 1]

180.14 Meetings, notice, election of officers; term. (1) **TIME AND PLACE.** Unless otherwise provided by law, the time and place of annual meetings of the members of every corporation shall be fixed by its articles or by-laws. If not so fixed, the annual meetings shall be on the anniversaries of the first corporate meeting.

(2) **OFFICERS TO HOLD OVER, SPECIAL ELECTION.** If an election of directors or trustees shall not take place at the annual meeting, a special meeting may be called by the president or the directors to elect such officers by giving such notice thereof, as is required for the annual meeting, but if such officers refuse or neglect to call such special meeting for ten days after the time fixed for the annual election, then any two members of the corporation may call such special meeting in the manner prescribed in section 180.06.

(3) **COURT PROCEEDINGS; APPOINTMENT BY GOVERNOR.** Whenever a corporation has failed for one year to elect its full board of directors, the circuit court shall, upon the verified petition of a member, and ten days' written notice, served upon resident members, as a summons is served, in circuit court, and served upon nonresident members by publication once a week for at least two successive weeks in some newspaper to be designated by the court, published at or nearest to the location of such corporation, and by mailing at least ten days before the hearing in the manner provided in section 269.34, order such corporation and its members to elect such directors within twenty days after the entry of such order. Upon proof of noncompliance with such order, the court shall report the matter to the governor, who shall appoint, from among the members, directors to fill the vacancies, such appointees to hold office until their successors are duly chosen by said corporation.

(4) **ELECTION ON SECULAR DAY.** When the day fixed for the annual election of officers or the meeting of a corporation shall fall on Sunday or on a legal holiday, such election or meeting shall be held on the next succeeding secular day.

(5) **NOTICE.** Corporation meetings shall be called and noticed in the manner prescribed by the articles or by-laws, but in case no provision therefor is so made, meetings of a corporation may be called by the board of directors or trustees at any time, and shall be called by the secretary when requested by one-fifth of the members of a nonstock corporation or by the owners of one-fifth of the outstanding shares of voting stock in a stock corporation on ten days' notice; and such notice to members may be served by publishing the same once in each week for two weeks in a newspaper published at or nearest to the location of the corporation, or by personal service or by mailing a copy thereof to each member directed to his last post-office address as the same appears in the records of the corporation.

180.15 Voting stock in other corporation; interlocking directorates. Stock held by one corporation in another shall be voted by the president of the former, unless its board of directors, by resolution, designate some other person for that purpose; and the officers of the former corporation may be chosen, qualify and act as directors and officers of the latter corporation.

180.16 River improvement corporations, may flow lands. Any domestic corporation created in whole or in part for the purpose of improving any stream and driving, holding or handling logs therein, and any corporation owning or controlling dams, booms or improvements designed to accomplish any of said purposes, or any municipality or any domestic corporation organized for the purpose of furnishing electric current for public purposes, shall have the power to acquire all such lands as shall be necessary for its use for ponds and reservoir purposes. Nothing in this section shall be construed as repealing any provision of section 31.30.

180.17 Transmission lines; privileges; damages. (1) **RIGHT OF WAY FOR.** Any domestic corporation organized to furnish telegraph, telephone, service or transmit heat, power or electric current to the public or for public purposes, and any co-operative association organized under chapter 185 to furnish telegraph, telephone or transmit heat, power or electric current to its members, may, subject to reasonable regulations made by any city or village through which its transmission lines or systems may pass, construct and maintain such lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge or any stream or body of water, or upon any lands of any owner consenting thereto, and for such purpose may acquire lands or the necessary easements; and may connect and operate its lines or system with other lines or systems devoted to like business, within or without this state, and charge reasonable rates for the transmission and delivery of messages or the furnishing of heat, power or electric light.

(2) **NOT TO OBSTRUCT PUBLIC USE.** But no such line or system or any appurtenance thereto shall at any time obstruct or incommode the public use of any highway, bridge, stream or body of water.

(3) **ABANDONED LINES REMOVED.** The public service commission after a public hearing as provided in section 196.26, and subject to the right of review as provided in chap-

ter 227, may declare any line to have been abandoned or discontinued, if the facts warrant such finding. Whenever such a finding shall have been made the corporation shall remove such line, and on failure for three months after such finding of abandonment or discontinuance, any person owning land over, through or upon which such line shall pass, may remove the same, or the supervisors of any town within which said lines may be situated, may remove the said lines from the limits of its highways, and such person or supervisors shall be entitled to recover from the company owning the lines the expense for labor involved in removing the property.

(4) **LOCATION OF POLES.** In case of dispute as to the location of poles, pipes or conduits, the commissioners appointed in condemnation proceedings under chapter 32 may determine the location. In no case, except where the owner consents, shall poles be set in front of or upon any residence property, or in front of a building occupied for business purposes, unless the commissioners find that the same is necessary and the court may review the finding.

(5) **LIMITATION OF ACTION.** The proceedings authorized in chapter 32 shall not be taken nor other action commenced against the corporation in respect to its rights to use or possess lands, unless begun within six years after the commencement of such use or possession.

(6) **TREES PROTECTED, PENALTIES.** Any such corporation which shall in any manner destroy, trim or injure any shade or ornamental trees along any such lines or systems, or cause any damage to buildings, fences, crops, live stock or other property, except by the consent of the owner, or after the right so to do has been acquired, shall be liable to the person aggrieved in three times the actual damage sustained, besides costs.

(7) **MUNICIPAL FRANCHISE REQUIRED.** No lighting or heating corporation shall have any right hereunder in any city or village until it has obtained a franchise or written consent for the erection or installation of its lines from such city or village. [1931 c. 183 s. 2; 1931 c. 475 s. 2; 1937 c. 365; 1943 c. 375 s. 63]

Cross Reference: Subsection (5) and section 330.12 conflict.

Note: The authority of a utility to use city streets comes directly from the legislature, and the exercise of such statutory franchise may only be controlled by a city in recognition of the existence of the fran-

chise, and in conformity with a just and reasonable administration of the police power in the interest of the city and its inhabitants. A Milwaukee ordinance regulating the opening of pavements by public utilities was declared unconstitutional. *Wisconsin Telephone Co. v. Milwaukee*, 223 W 251, 270 NW 336.

180.18 Wires over railroads. (1) All wires strung over any steam railroad shall be tied to insulators fastened to double cross-arms attached to a pole at each side of the crossing. The poles if of wood shall not be less than six inches in diameter at the top (if of other materials at least the equivalent strength thereof), set not less than five feet in the ground, securely guyed, and, unless the railroad right of way is over one hundred feet in width, shall be set not more than one hundred feet apart. The cross-arms shall be attached to the poles by machine bolts, and braced by at least one iron brace from each cross-arm to the pole. All wires shall be maintained not less than twenty-five feet above the rails, except street railway trolley wires, which shall be maintained not less than twenty-two feet above the rails.

(2) Any person ordered by the public service commission to change its wires so as to conform to this section failing to comply with such order within ten days from the service thereof, shall forfeit twenty-five dollars, and a like forfeiture for every additional ten days of noncompliance with the order, unless a greater length of time to make such change shall be granted.

180.19 Damages for nondelivery of message. Persons owning or operating any telegraph, telephone or power transmission line or heat system for public purposes shall be liable for all damages occasioned by the failure or negligence of their operators, servants or employes in receiving, copying, transmitting or delivering dispatches, messages or the furnishing of power to its patrons for public purposes, including damages for mental anguish resulting directly and proximately from or occasioned by such failure or negligence in receiving, copying, transmitting or delivering dispatches or messages, but not to exceed five hundred dollars for mental anguish.

180.20 Driving park corporation. Any corporation formed under this chapter to establish, maintain and manage any driving park may have grounds and courses for improving and testing the speed of horses and may offer and award prizes for competition; but no racing for any bet or wager shall be allowed; and any such corporation may prevent gambling or betting of any kind, and preserve order on its grounds, and establish rules therefor, and appoint officers and agents who, for that purpose, shall have the power of constables.

180.21 Gun clubs. Any domestic corporation formed for the purpose of sharpshooting or improving in the use of firearms may acquire suitable grounds therefor, and may establish, use and maintain a rifle range for its exercises. After such grounds and range

are permanently located and improved by the erection of buildings, breastworks, ramparts or otherwise, no public street shall be opened through the tract so used or occupied, unless the necessity therefor shall be first established by verdict of a jury; nor shall any suit be maintained against such corporation to restrain, enjoin or impede its exercises at the place so selected on complaint of any private individuals or parties, who shall acquire title to any property adversely affected by such exercises after such grounds and range are permanently located and improved as aforesaid.

180.215 [Repealed by 1927 c. 534 s. 19a]

180.22 [Repealed by 1927 c. 541 s. 27]

180.23 [Renumbered section 180.18 by 1927 c. 534 s. 21]

180.24 [Renumbered section 180.17 by 1927 c. 534 s. 20]

180.25 Loans; mortgages. Any corporation formed to furnish water, heat, light, power, telegraph or telephone service or signals by electricity may, subject to the provisions of chapter 184 and by a vote of two-thirds of its capital stock outstanding and entitled to vote, or any co-operative association organized under chapter 185 to furnish water, heat, light, power, telegraph or telephone service to its stockholders or members only may, by a vote of a majority of a quorum of its stockholders or members present at any regular or special meeting held upon due notice as to the purpose of the meeting or when authorized by the written consent of the holders of a majority of its capital stock outstanding and entitled to vote or of a majority of its members, borrow money and execute its bonds or notes therefor, and to secure the payment of such bonds or notes to a fixed amount or in amounts to be from time to time determined by the board of directors may mortgage or trust deed any or all of the property, rights and privileges and franchises that it may then own or thereafter acquire, and may, in and by such mortgage or deed of trust, provide for the disposal of any of its property and the substitution of other property in its place. Every such mortgage or deed of trust may be recorded in the office of the register of deeds of the county in which such corporation is located, and such record shall have the same force and effect as if the instrument were filed in the proper office as a chattel mortgage, and so remain until satisfied or discharged without any further affidavit or proceeding whatever. [1937 c. 143]

180.26 Boards of trade. An incorporated board of trade shall have the right to establish reasonable by-laws or rules for the government of the business transactions of its members, and to establish committees of reference or arbitration for the determination of differences and controversies according to the usages of other similar bodies. And any award by such committee on arbitration, made according to such by-laws and rules, may be filed in the circuit court of the county and judgment entered thereupon according to the practice and subject to review as provided in case of awards under chapter 298.

180.27 Lyceum, libraries and art galleries. Any corporation formed for the establishment and maintenance of lyceums, libraries, art galleries and the like shall have power to make by-laws for the protection of its property, and to provide fines upon its members or patrons for their infraction by way of liquidated damages; and may collect the same in a tort action.

180.28 School corporations. Any corporation formed for the establishment and maintenance of schools, academies, seminaries, colleges or universities or for the cultivation and practice of music shall have power to enact by-laws for the protection of its property, and provide fines as liquidated damages upon its members and patrons for violating the by-laws, and may collect the same in tort actions, and to prescribe and regulate the courses of instruction therein, and to confer such degrees and grant such diplomas as are usually conferred by similar institutions or as shall be appropriate to the courses of instruction prescribed. Any stockholder may transfer his stock to the corporation for its use; and if the written transfer shall so provide such stock shall be perpetually held by the board of directors with all the rights of a stockholder, including the right to vote.

180.29 Universities and colleges may unite. (1) Any university or college may receive any other university or college, upon resolution of the board of trustees of both institutions, as a branch of the former, and shall be subject to such rules, regulations, agreements and liabilities as may be agreed upon. The receiving university or college may grant such diplomas and confer such degrees as shall be appropriate to courses of instruction prescribed and pursued in such received university or college, and any such university or college so received may upon such terms as shall be agreed to by its corporate members and trustees sell, or give an option to purchase, all its property, business and effects to such receiving college or university.

(2) Any privately supported school, academy or seminary may receive any other privately supported school, academy or seminary upon resolution of the board of trustees of both institutions, as a branch of the former, and shall be subject to such rules, regulations, agreements and liabilities as may be agreed upon. Any such privately supported school,

academy or seminary so received may, upon such terms as shall be agreed to by two-thirds of its corporate members and trustees, convey all its property, business and effects to such receiving school, academy or seminary. [1935 c. 149]

180.30 Corporations having church affiliations. Whenever any corporation shall be formed under this chapter for the benefit of, or be in any manner connected with, any church or religious denomination or society, its articles of organization may provide that it shall be under the supervision and control of such church, denomination or society; and that the officers or trustees be communicants thereof.

180.31 Railway equipment companies. (1) **DIRECTORS; STOCKS; BONDS.** The board of directors of any corporation organized under this chapter for the purpose of buying, selling, leasing or in any manner dealing in railway cars, locomotive engines or other railway equipment may classify or divide its property into series or classes, and suitably designate each such series or class; and may, by a resolution, ratified by vote of a majority of its common stock, authorize the issue of a special or a preferred stock based in whole or in part upon any such class or series, with such provision as to preference dividends out of the earnings of or profits upon the property of the series or class upon which such stock is based, and with such voting power, if any, and other such rights and provisions generally as may be defined in said resolution; and such stock may be issued in as many classes or series as the said corporation may have classes or series of equipment property, and in such amount as to each series or class as may be stated in said resolution, and the same may be issued from time to time and sold or disposed of in such manner and upon such terms as said board shall determine; and every such corporation shall have the power to issue, in like manner, its bonds or obligations for such amount and upon such terms as shall be defined by the resolution, and may secure the same by mortgage or deed of trust upon all of its property then owned or thereafter to be acquired, or upon any one or more of the classes or series of its property, or it may issue and secure both said general and special bonds or obligations in like manner.

(2) **POWERS; PLACE OF BUSINESS.** Every such corporation shall possess all the rights and powers conferred upon corporations by chapters 180 to 184. It may have its principal place of business without the state; provided, that if its principal place of business shall be outside the state, process in actions against it may be served upon the secretary of state, in the manner provided in chapter 226 for service upon a licensed foreign corporation.

180.32 [Renumbered section 372.07 by 1933 c. 436 s. 8]

180.32 Hospital service corporations, public policy. (1) As a guide to the interpretation and application of this section, the public policy of this state is declared to be: To ease the burden of payment for hospital services, particularly in the low income groups, where with the advance of scientific methods the payment for adequate hospital services is a pressing problem with grave social ramifications, nonprofit hospital service corporations, based on the tested experience in many parts of the United States, economically sound and socially beneficent, are needed. While in no way changing the present status of voluntary hospitals in the state, these corporations will enable a larger number to procure for themselves adequate hospital services and leave the use of the free and part-free services given by the hospitals to those whose economic status makes self-procurement of such services impossible. Without imposing the burden on the public treasury and free from any motive of profit, these corporations will contribute to the solution of a pressing social and economic problem in the state and merit the support of the citizens.

(2) Nonprofit hospital service membership corporations without capital stock may be organized not for profit under the laws of this state, for the purpose of establishing, maintaining and operating hospital service plans, whereby certain hospital service may be provided by participating hospitals to persons who may become subscribers to such plans. The term "participating hospital" as used in this section is defined to mean any hospital which has a contract with a nonprofit hospital service membership corporation to render hospital service to subscribers to the hospital service plan. The term "subscriber" as used herein is defined to mean any person to whom the corporation shall issue a service contract entitling such person to certain hospital service by a participating hospital.

(3) The articles of incorporation of any corporation organized under this section shall provide:

(a) That the members of the corporation shall be: 1. Three nonmedical persons excepting medical administrators designated by each participating hospital at least two of whom shall be directors or be active in the operation of such participating hospital; and, 2. A number of persons equal to the number of participating hospitals each of whom shall be a physician and surgeon and shall be appointed by the medical staff of the hospital from its own members, or if there be no such staff, then by the attending physicians of the hospital from among themselves subject in either case to the approval of the state

medical society, operating under subsection (1) of section 148.01. The members shall be appointed annually for terms of one year each and shall be such members until their successors are appointed and qualified and vacancies shall be filled by the appointing body for the unexpired term;

(b) That the directors shall consist of such number as may be specified in the articles of incorporation or in the by-laws and shall be elected from the groups mentioned in paragraph (a) of this subsection in the proportion prescribed therein for membership by such groups, and except at the first meeting not more than one-third of the directors shall be elected at any annual meeting;

(c) That all contracts between such corporation and a subscriber shall provide for hospital services only and shall not embrace medical services. Such contract shall not be interpreted to place upon the subscriber the obligation of choosing for hospital services any particular participating hospital among the contracting participating hospitals, or give the corporation the right to designate or require the choice of any particular participating hospital.

(4) Such corporation shall not enter into contracts with subscribers until it shall have contracts with not less than six participating hospitals having a total of not less than six hundred beds.

(5) Every such corporation shall annually on or before the first day of March file in the office of the commissioner of insurance, a statement verified by at least two of the principal officers of said corporation showing its true condition as of the thirty-first day of December next preceding. Said statement shall be in such form and shall contain such other matter as the commissioner of insurance shall prescribe.

(6) The commissioner of insurance or any deputy or examiner designated by him shall, not less than once in three years, examine into the affairs of such corporation and shall make report thereon in writing, which report, after such hearing as such corporation may request, shall be filed in his office.

(7) The funds of any such corporation shall be invested as provided in sections 206.35 and 206.36.

(8) Such corporation shall be governed by chapter 180, and unless express reference is made in this section, or unless expressly designated therein, no other law shall apply to such corporation. Every such corporation is hereby declared to be a charitable and benevolent corporation, and its property, real, personal and mixed, its income, and property transferred to it, shall be exempt from taxation as provided in sections 70.11, 71.05, 72.04, and 72.75, and its employees shall be excluded from the provisions of chapter 108 as provided in section 108.02.

(9) All nonprofit hospital service plans shall be operated in this state exclusively by corporations organized and operated under this section. No such corporation shall contract or continue a contract with a participating hospital which contracts with any other corporation operating a nonprofit hospital service plan under this section.

(10) Nothing in any contract to be made by any such corporation with a participating hospital or subscriber shall have the effect of imposing upon any participating hospital any obligation or liability for any act, omission or default of any other participating hospital or of such corporation. [1939 c. 118]

180.33 [Renumbered section 372.06 by 1933 c. 436 s. 7]

180.34 [Renumbered section 180.27 by 1927 c. 534 s. 31]

180.35 [Repealed by 1933 c. 436 s. 15]

180.36 [Renumbered section 180.29 by 1927 c. 534 s. 33]

180.37 [Renumbered section 180.30 by 1927 c. 534 s. 34]

180.38 [Renumbered section 180.32 by 1927 c. 534 s. 36]

180.39 [Renumbered section 180.31 sub. (1) by 1927 c. 534 s. 35]

180.40 [Renumbered section 180.31 sub. (2) by 1927 c. 534 s. 35]