

BOOK REVIEWS

NORTH CAROLINA CORPORATION LAW AND PRACTICE. By Russell M. Robinson II.¹ Atlanta: The Harrison Company, 1964. Pp. xix, 784.

Prior to the Business Corporation Act,² North Carolina corporation statutes had failed to resolve many corporate problems facing businessmen and attorneys, despite the aid of some 700 supreme court decisions.³ Consequently, the Business Corporation Act Drafting Committee, in conjunction with the General Statutes Commission and the General Assembly, endeavored to produce an exhaustive corporation statute that would solve many questions of corporate law, thereby providing a reliable guide for the conduct of all phases of corporate activities from pre-incorporation to post-dissolution.

In order to afford ample opportunity for the proposal and enactment of amendments, the act was passed by the General Assembly in 1955 with a proviso that it would not become effective until July 1, 1957. However, relatively few amendments were proposed during this period. At this point it is appropriate to note that a legislative body cannot be expected to produce comprehensive legislation which will anticipate all the situations arising thereunder. Any act which purports to deal with a broad area of the law must be continually studied, interpreted and, from time to time, amended. The Business Corporation Act is no exception; although it resolves many previously unanswered questions, others are left without solution and additional problems are created by the new legislation itself.

It is within this context that "North Carolina Corporation Law and Practice" must be viewed. Mr. Robinson has produced a clear, systematic and comprehensive analysis of North Carolina's corporation law which performs two essential functions: (1) it is a material contribution to the constructive criticism of existing law, including recommendations for clarification and improvement; (2) it provides a practical working tool for attorneys facing corporate problems.

¹ Member, North Carolina Bar.

² N.C. GEN. STAT. ch. 55 (1959).

³ ROBINSON, NORTH CAROLINA CORPORATION LAW AND PRACTICE, p. v (1964).

The first function is achieved by focusing upon many of the inevitable ambiguities, omissions and provisions of questionable wisdom in the statute which will have to be resolved by the General Assembly or the courts. This may relieve the necessity for time-consuming research at public expense ordinarily required for the development and consideration of possible legislative amendments. For example, Mr. Robinson indicates several respects in which the financial provisions of the act are not as flexible as they might be.⁴ He indicates that although the act allows director and shareholder action by written consent without formal meetings, it may be necessary for the *organization* meeting of the directors of a new corporation to be held formally.⁵ Similarly, questions are raised with respect to the necessity of shareholders' meetings to take certain types of action.⁶

The liability of shareholders for unlawful distributions of corporate assets is also discussed, and Mr. Robinson demonstrates that the wording of the statute may create problems of interpretation in this area.⁷ Another question created by the statute is whether the initial bylaws adopted by the directors at their organization meeting can authorize a number of directors different from the number specified in the articles of incorporation.⁸ An additional inconsistency occurs where the act requires a two-thirds shareholder vote to release shares from pre-emptive rights, yet permits the same result to be achieved by a simple majority vote of the shareholders to amend the charter.⁹

The author's references to the Model Business Corporation Act are used in a similar vein. In his discussion of the executive committee of the board of directors, for example, Mr. Robinson refers to problems that might arise if an executive committee attempts to act for the board on fundamental or extraordinary matters.¹⁰ He also indicates that the North Carolina statute does not specifically authorize the appointment of committees of the board other than the executive committee. This is contrasted to section 38 of the Model Business Corporation Act which limits the authority which may be delegated

⁴ *Id.* at 16.

⁵ *Id.* at 33-34.

⁶ *Id.* at 142.

⁷ *Id.* at 191-93, 577-78.

⁸ *Id.* at 217.

⁹ *Id.* at 348.

¹⁰ *Id.* at 227-28.

to an executive committee, and provides for the formation of other committees.¹¹ These and similar discussions can be of inestimable value to the General Statutes Commission and legislature as they study improvements of the act.

The book also fulfills its function as a working tool for the practicing attorney. Its interpretation and application of the Business Corporation Act is timely, comprehensive and reliable. It is thoroughly footnoted with cross references, statutory, case and treatise citations. In addition to the substantive analysis there is a useful section with forms and an index. One example of the author's beneficial use of footnotes may be found in his discussion of North Carolina's unique provision giving minority shareholders the right to compel dividend payments amounting to at least one-third of a corporation's net profits.¹²

Another approach employed by the author is the discussion of the pros and cons of unsettled issues, including references to the law of other jurisdictions, pertinent supporting authority, and recommendation of the safer practice to follow pending ultimate settlement of the question by the courts or legislature. The matter of directors' voting by proxy, for example, is handled in this fashion.¹³

A third practical feature is the inclusion of references to the provisions in the original draft of the Business Corporation Act which were omitted from the final version of the statute. One example of this is the provision in the original draft that "dominant shareholders" shall stand in a fiduciary relation to "minority shareholders."¹⁴

Of invaluable aid to the practicing attorney are the several checklists Mr. Robinson has provided. These include: a checklist of the statutory majorities required for shareholder action;¹⁵ a list of those matters of proposed corporate business which may not be acted upon at an annual meeting of shareholders unless included in the notice of the annual meeting;¹⁶ a checklist of devices for rearranging control of a corporation;¹⁷ a list of matters upon which the directors

¹¹ *Id.* at 227 n.60.

¹² *Id.* at 421-25.

¹³ *Id.* at 212-13.

¹⁴ *Id.* at 200.

¹⁵ *Id.* at 109-13.

¹⁶ *Id.* at 130.

¹⁷ *Id.* at 146-47.

have authority to act under the statute;¹⁸ a listing of the particular majority vote required for action by the directors on certain matters;¹⁹ and a list of situations in which pre-emptive rights are not allowed, absent a charter provision to the contrary.²⁰ Finally, the annotated forms in Part VIII are a "bread and butter" feature for the average practitioner.

In summary, Russell Robinson has achieved most admirably the aim expressed in the preface of his book—to satisfy the need for a practical and comprehensive summary of North Carolina corporation law for the practicing lawyer by correlating and analyzing the statutes and cases in topical arrangement. As a bonus, he has made a fine public contribution from which the legislative branch of our state government may derive material benefit.

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¹⁸ *Id.* at 207-08.

¹⁹ *Id.* at 211-12.

²⁰ *Id.* at 347-48.

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