Summer 1947

Corporations
time before completing payments on the stock;\(^2\) (2) deposit in a bank or trust company for the employee’s account;\(^3\) (3) payment of premiums on policies of insurance or annuities purchased by the employee on his own life;\(^4\) and (4) assessments or dues on a hospital service, surgical or medical expense plan, or to an employee pension or benefit plan.\(^5\)

**Retail Installment Sales.** The maximum price for goods which may be sold on installments was raised from one thousand and five hundred dollars to two thousand five hundred dollars.\(^6\)

A 1935 statute permitted assignment of retail installment contracts only to licensees under that act.\(^7\) Assignment may now be made to a retail seller who was a party to the sale, whether or not he is licensed under the 1935 act.\(^8\)

All persons other than parties to the contract or authorized assignees are prohibited from suing on any retail installment contract.\(^9\)

**Legal Holidays.** The days of city and primary elections are newly-declared legal holidays.\(^10\)

**CORPORATIONS**

**Voting Trusts**—Chapter 46 legalizes voting trust agreements\(^1\) when the purpose of the agreement is lawful.\(^2\) Ob-

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2. §1(c)(4).
3. §1(c) (10).
4. § 1(c)(11).
5. § 1(c)(8).
8. C. 238, § 2. By taking advantage of this exception to the licensing statute, retail sellers may accept reassignment of commercial paper from finance companies and thereby control relations with their customers.
9. Ibid.
1. "The current prevailing view toward voting trusts has come to be that they are valid even in the absence of statute". Ballantine, "Corporations" (rev.ed.1946) §184.
2. "The statutes are not intended to preclude the courts from invalidating voting trusts which have no legitimate business pur-
viously an intention to eliminate competition by the creation of a voting trust is an illegal purpose. Although a particular purpose may be legal when the agreement is created, an amendment to the voting trust statute may make this purpose illegal so that the agreement becomes invalid.

A copy of the agreement, upon a written demand by the corporation or by a shareholder of record, must be filed with the secretary of the corporation and shall be subject to inspection by any shareholder. This agreement shall not be irrevocable for more than ten years unless the voting rights are coupled with an interest in the shares. The definition of coupled with an interest is identical to the one used by the Ohio voting trust statute. Ohio's definition has been characterized as "dangerously broad." In an Ohio case a voting trust was created in which no provision was made for the termination of the trust within ten years. Nevertheless, the court held the voting trust was valid but only for a ten year period, since compliance with the statute must have been intended by the settlor. On the other hand, non-compliance with statutory requirements has been held to render the agreement ineffective so that a transfer of the stock on the books.
of the corporation gives the transferee the right to vote.\(^{10}\)
If the agreement so provides, the trust may be extended from
time to time for periods of not more than ten years.\(^{11}\) But such
a provision has been interpreted as not permitting a clause in the voting trust agreement authorizing the trustees
to create a new voting trust every ten years.\(^{12}\) Even though
irrevocable for ten years, if the beneficial ownership of any
shares is acquired by the corporation, then, as to those shares,
the voting trust is automatically terminated.\(^{13}\) In the twenty-
one states having voting trust statutes, the usual limitation is
ten years,\(^{14}\) but the periods vary from five to twenty-one
years.\(^{15}\)

Upon the creation of a voting trust\(^{16}\) the shareholder
transfers his share certificates to the trustee. This transfer
is subject to federal taxation.\(^{17}\) After the transfer, the trustee
issues voting trust certificates. Unless the agreement other-
wise provides,\(^{18}\) these certificates are subject to the Indiana
Uniform Stock Transfer Act.\(^{19}\) After the transfer of the
share certificates to the trustee, he may surrender them to
the corporation with a request that new certificates be issued

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(1937).
610 (1934).
§612.19; Idaho Code (1932) § 29-134; Kan. Gen. Stat. (Corrick,
Supp. 1945) §§17-3307 (unless coupled with an interest); La. Gen.
art. 23, § 131; Mich. Comp. Laws (Mason, Supp. 1940) § 10135-34;
§ 14:10-10; N.Y. Stock Corp. Act § 50; Ohio Gen. Code Ann. (Page,
Purdon, 1938) tit. 15, § 2851-511; Tenn. Code (Michie, Repl. 1942)
15. Cal. Civ. Code (Deering, 1941) § 321a (21 years, but the voting
trust may be terminated at any time by a majority in interest);Minnesota.
Stat. (Henderson, 1941) § 301.27 (15 years unless connected
with a debt); Neb. Rev. Stat. (1932) § 21-139 (5 years); Nev.
Comp. Laws (Hillyer, 1929) § 1621 (15 years).
16. The usual consideration for a voting trust agreement will be the
214.
in his name. These new certificates, as well as appropriate entries in the corporate books, must give notice of the voting trust.\textsuperscript{20} Even though the trustee thus becomes the record holder of the shares, the beneficial owner has the same rights to examine the books of the corporation as if he were the record holder.\textsuperscript{21}

The trust agreement may define the authority and liability of the trustee.\textsuperscript{22} There has been much litigation concerning the powers thus given to trustees. In one case,\textsuperscript{23} an exculpatory clause in a voting trust agreement was held no bar to statutory removal of trustees for misconduct. Since the Indiana statute requires that the exonerating provisions of an agreement must not be "repugnant to law," an attempted exculpatory clause for misconduct would probably be invalid. Even though apparently within the scope of the general power granted by the agreement, the trustee cannot act adversely to the interests of those he represents whether this benefits himself or other persons.\textsuperscript{24} When the agreement requires all the trustees to act, although less than the full number have no power to act,\textsuperscript{25} a voting trustee may give a proxy to a co-trustee but only after all the trustees have conferred and decided how to vote on the particular matter.\textsuperscript{26} Similarly, a trustee cannot exercise his power through an agent.\textsuperscript{27} The power to vote for dissolution will not be conferred on a trustee by general language in the voting trust agreement.\textsuperscript{28} But specific language in the agreement can authorize the trustee to vote for the sale and disposition of corporate prop-

\begin{itemize}
\item \textsuperscript{20} Ind. Acts 1947, c. 46, § 6.
\item \textsuperscript{21} Ind. Acts 1947, c. 46, § 9. Quaere, does the trustee, who is the record holder, have the same rights? Probably so, in which case one share of stock confers the right of inspection upon two persons.
\item \textsuperscript{22} Ind. Acts 1947, c. 46, § 4.
\item \textsuperscript{23} Petition of Allen, 178 Misc. 541, 35 N.Y.S. (2d) 120 (1942).
\item \textsuperscript{24} Brown v. McLanahan, 148 F. (2d) 703 (C.C.A. 4th, 1945).
\item \textsuperscript{25} Loughery v. Bright, 267 Mass. 584, 166 N.E. 744 (1929).
\item \textsuperscript{26} Chandler v. Bellanca Aircraft Corp., 19 Del. Ch. 57, 162 Atl. 63 (1932). The decision was based upon statutory authorization, but presumably the same result could be reached in Indiana by a provision in the agreement.
\item \textsuperscript{27} Re Green Bus Lines, 166 Misc. 800, 2 N.Y.S. (2d) 556 (1937).
\item \textsuperscript{28} Re Bacon, 287 N.Y. 1, 38 N.E. (2d) 105 (1941); Mannheimer v. Keehn, 41 N.Y.S. (2d) 542, 547 (1943).
\end{itemize}
property, merger, refinancing or reorganization of the corporation.

The rights conferred by this statute are in addition to other statutory rights as well as rights at common law. Prior to this statute, there were no cases in Indiana recognizing a voting trust as valid.

From one Indiana case an inference could be drawn that voting trusts without statutory authority were not illegal per se. In another case, several stockholders made an assignment which authorized a trust company to vote their shares for certain directors. This agreement was not attacked as a voting trust and the court held that it was not void because its purpose was to perpetuate certain directors in office. Since the stockholders reserved the right to vote upon all other matters, this agreement was more like a proxy than a voting trust; however, the case represented a forward step towards judicial recognition of the validity of voting trusts in Indiana even in the absence of a statute.

**Merger and Consolidation of Non-profit Corporations.**—Chapter 88 authorizes the merger and consolidation of non-profit corporations organized under the Indiana non-profit corporations act.

Section 2 establishes the procedure for merger and section 3 establishes the procedure for consolidation. Section 3 (b) incorporates specifically section 2(a) and clearly intended to include section 2(b). This error is obvious since
it is fundamental that a statute must be construed as a whole and its different sections read together and harmonized wherever possible.  

Foreign Non-profit Corporations.—Chapter 26 provides that a foreign non-profit corporation transacting business in this state without authority shall not maintain a suit in the courts of this state upon any demand arising out of a contract or tort. A maximum penalty of ten thousand dollars is established for transacting business without authority and in appropriate proceedings brought by the attorney general the corporation may be enjoined from transacting business in Indiana.

Three situations may arise. First, a corporation may sue without being authorized to transact business in this state. In such a case an answer in abatement is sufficient. Second, the circumstances may be such that the corporation can no longer comply with the statute. In this case, the corporation can never maintain the suit. Third, after the answer in abatement, the corporation may comply with the statute and begin the suit anew. Although the contract sued upon was executed before compliance with the statute, the contract is not void and the suit can be maintained. This is reasonable. The primary purpose of legislation of this type is to secure compliance with admission statutes.

Domestic Corporations for Profit.—Chapter 57 embodies several minor changes in the general corporation act. Section one prohibits for a period of ten years the use of a corporate name similar to the name of a corporation whose existence

while it is 2(b) that prescribes the number of affirmative votes that must be received.

44. Barnett v. Central Republic Bank and Trust Co., 100 Ind. App. 495, 196 N.E. 369 (1935). In this case, the plaintiff corporation had consolidated with another corporation before the suit was brought. This consolidation precluded the plaintiff corporation from thereafter complying with the admission statute.
has ceased due to merger, consolidation, or sale of assets. This prohibition does not apply to a corporation which acquires ownership of another corporation. An acquiring corporation may give another corporation written permission to use the name of any corporation it has acquired.

A 1935 amendment to the corporation statute which authorized the filing of a voluntary petition in bankruptcy has been repealed.

A corporation that voluntarily or involuntarily dissolves is now specifically permitted to collect, liquidate and distribute to the shareholders any assets not distributed prior to dissolution. In order to exercise these privileges the dissolved corporation is given the right to sue. The same rights are extended to a corporation whose term of existence as fixed by its articles of incorporation has expired. There is no limitation on the time in which the corporation must bring these suits. The two year limitation on actions against a corporation which voluntarily dissolves remains unchanged. Likewise, suits may be commenced against a corporation for a term any time within two years from the date its corporate existence expires. However, a decree of involuntary dissolution acts as a bar against new suits against the corporation and no creditor's claim shall be permitted to be filed in the receivership proceeding.

Section 6 restricts the former ten year period in which a corporation for a term may validate acts performed subsequent to the expiration of its term to two years.

47. Ibid.
49. Ind. Acts 1947, c. 57, § (c).
50. Id. § 4 (f).
51. Id. § 5.