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RUSH STURGES
ASSOCIATE

*WITH THE ARMED FORCES

TELEPHONE
DEXTER 2400
CABLE ADDRESS
"HINCKALL"

October 31, 1945

Mr. James C. Carr,
Deputy Secretary of State
State House
Providence, Rhode Island

Dear Mr. Carr:

Confirming my conversation with you, I would appreciate it if you would obtain from the Attorney General a ruling as to whether a proposed amendment to the Charter of the Rhode Island Country Club may be filed under the provisions of Section 76 of the General Corporation Laws, pertaining to amendment of Charters of miscellaneous corporations.

The facts are as follows:

Rhode Island Country Club was incorporated by the General Assembly at its January Session, 1911. Under Section 1, the Club was formed for "athletic, social and literary purposes***." The Club had power to hold real and personal estate to an amount not exceeding \$150,000.

Under Section 2, it was provided that the capital stock shall not exceed \$150,000 to be divided into shares of common stock of \$250 each.

Section 3 provided that no person, except as trustee of the corporation, could hold more than two shares, and provision was made for offering any stock to the corporation before it could be sold, etc.

At the January Session, 1926, Section 1 of the original Act was amended so as to permit the Club to hold real and personal estate to the extent of \$400,000, and Section 3 was amended in particulars not here important.

On July 30, 1934, there was filed in the office of the Secretary of State an amendment, adopted by the corporation, by a majority of its members, to Section 1 to the effect that the corporation might issue its bonds to the extent of \$100,000.

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To Mr. James C. Carr

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The Club now desires to amend Section 2 of the Charter so as to change the par value of the shares from \$250 to \$50 each, and it may possibly wish to amend Section 3 so as to provide that no person, except as trustee of the corporation, shall hold more than 10 (instead of 2) shares of stock at the same time. The question is whether such proposed amendment may be filed under the provisions of Section 76 of Article III of the General Corporation Law, relating to miscellaneous corporations. That Section provides that any corporation created by special act of the General Assembly, which might be organized under Title III, whose Charter is subject to amendment at the will of the General Assembly, may amend its Charter at any legal meeting of the corporation by such vote as is prescribed for the amendment of its By-Laws. This corporation was created by special act of the General Assembly. It might be organized under Title III as a corporation organized for literary, social or sporting purposes and not organized for business purposes. Its Charter is subject to repeal at the will of the General Assembly. Its By-Laws may be amended at any meeting of the corporation by a majority of all the votes which the members of the corporation are entitled to cast. Members of the corporation are composed of resident members of the Club, each of whom at the same time owns at least one share of its capital stock. Thus, some shareholders are not members of the corporation. Only members of the corporation are entitled to vote.

If the corporation is to be classified as a business corporation, then an amendment must be adopted under Section 50 of the General Corporation Law by the vote of a certain proportion of the stockholders. As before stated, in the Rhode Island Country Club, stockholders as such are not entitled to vote under the By-Laws, but such voting is confined to members of the corporation who are residents of the Club, owning stock.

You have stated to me that although the Club was organized solely for "athletic, social and literary" purposes, you have some doubt as to whether the fact that it has capital stock makes it in fact a business corporation.

I feel that whether the corporation should properly be classified as a business corporation under Article II, or as a miscellaneous corporation under Article III should depend fundamentally upon the purposes for which it is organized. A business corporation is defined under Section 3 (1) of Article II as one "having capital stock and established for the purpose of carrying on business for profit." A miscellaneous corporation is defined under Section 72 of Title III as "All libraries, lyceums, fire engine companies and corporations formed for religious, charitable, literary, scientific, artistic, social, musical, agriculture, theatrical or sporting purposes, not organized for business purposes, and all corporations of like nature."

I realize that ordinarily miscellaneous corporations do not have

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capital stock, but my feeling is that if a corporation is not organized for business purposes, the fact that it has capital stock should not make it a business corporation. I think also that the ordinary construction of the language in Section 1 of the Charter of the Rhode Island Country Club to the effect that it is organized for "athletic, social and literary purposes" is that it is not organized for business purposes.

As bearing upon the practical construction of this language, I mentioned to you that the corporation has regularly paid only the minimum franchise tax which applies to corporations having capital stock, but it has not paid the corporate excess tax which applies to corporations carrying on business for profit. I also mentioned to you that by two rulings of the U. S. Treasury Department, the corporation has been exempted from Federal Income and Capital Stock taxes on the basis that it is not carrying on business for profit.

You pointed out that the corporation has filed an Annual Report each year which is required to be filed by business corporations. Personally, I think this was inadvertent and that the Club should have filed the biennial report instead of the Annual Report.

Upon considering all of the aspects of the case, my own feeling is that the Club should be classified as a miscellaneous corporation. The Club desires at its next annual meeting of members of the corporation to amend its Charter in the respects stated above and file the amendment under Title III applicable to miscellaneous corporations. I would, therefore, appreciate it if we could have a ruling from the Attorney General as to whether the amendment may be so filed.

Yours very truly,

Chauncey E. Wheeler

STATE OF RHODE ISLAND
DEPARTMENT OF THE ATTORNEY GENERAL
PROVIDENCE COUNTY COURT HOUSE
PROVIDENCE

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ATTORNEY GENERAL

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ASSISTANT ATTORNEYS GENERAL
JOHN J. COONEY
COUNSEL

December 6, 1945.

Hon. Armand H. Cote
Secretary of State
State House
Providence, Rhode Island

Dear Sir:

I am in receipt of your request for my opinion as to whether the Rhode Island Country Club is a so-called "business" or "non-business" corporation within the meaning of Chapter 116, G. L. 1938, the General Corporation Law.

The Rhode Island Country Club is a corporation which was created by Special Act of the General Assembly, January Session, 1911, entitled "An Act to Incorporate the Rhode Island Country Club". The pertinent parts of this Act are:

"Section 1. for athletic, social and literary purposes...."

"Section 2. The capital stock shall not exceed one hundred and fifty thousand dollars, and shall be divided into shares of common stock of two hundred and fifty dollars each."

Our General Corporation Law, Chapter 116, G. L. 1938, Article II, defines a "business corporation" in section 3 as:

"....every corporation having capital stock and established for the purpose of carrying on business for profit...."

And Article III in general governs all other private corporations, except of course those created to carry on particular enterprises which we are not concerned with here. In other words, Article III deals with "Literary, Scientific and Miscellaneous Corporations" or so-called "non-business" corporations.

DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF RHODE ISLAND

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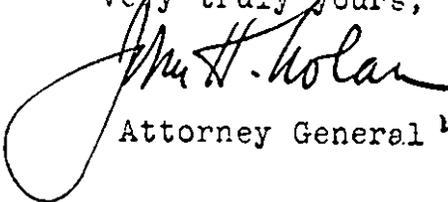
DATE 12/6/45

TO Hon. Armand H. Cote

I believe that the determinative element in answering this question is the purposes for which the corporation was created. The fact that it is authorized to issue capital stock is of secondary importance and certainly not a controlling factor. Although it is true that all "business corporations" have capital stock it does not necessarily follow that merely because a corporation has capital stock it is such a corporation. As a matter of fact, in section 3 of the General Corporation Law, supra, it must have capital stock, and, in addition, be established "for the purpose of carrying on business for profit". Considering the declared purposes of this corporation as set forth in its charter and the additional facts and information submitted to me of the actual operations of the same, I am of the belief that it is not carrying on a business for profit.

Therefore, I am of the opinion that the Rhode Island Country Club is a so-called "non-business" corporation and governed by the provisions of Article III of the General Corporation Law, and particularly, may amend its charter by following the procedure set forth in Section 76 thereof.

Very truly yours,



Arthur H. Nolan
Attorney General

OPINION OF
RELATIVE TO:

Corporate status of the
Rhode Island Country Club.

Filed December 7, 1945

In not soluto



State of Rhode Island.

GENERAL TREASURER'S OFFICE.

Providence, March 21, 1911. 190

Received of "RHODE ISLAND COUNTRY CLUB"

One hundred fifty-----Dollars, for bonus on

Charter granted at the January Session, A. D. 1901.

\$150.00

Walter A. Rees
General Treasurer.

AN ACT IN AMENDMENT OF AN ACT ENTITLED "AN ACT TO INCORPORATE THE RHODE ISLAND COUNTRY CLUB" PASSED AT THE JANUARY SESSION, A. D. 1911 AND OF ALL ACTS IN AMENDMENT THEREOF AND IN ADDITION THERETO.

H 706
Approved
April 8, 1926.

It is enacted by the General Assembly as follows:

SECTION 1. The act entitled "An act to incorporate the Rhode Island Country Club" passed at the January session, A. D. 1911 is hereby amended

so that said Rhode Island Country Club shall have power to take, receive and acquire by gift, devise, bequest, purchase or otherwise and to hold, manage, transmit, pledge and convey real and personal estate and the income thereof to such an amount as may in its judgment be necessary not exceeding in the aggregate four hundred thousand dollars.

SEC. 2. Section 3 of the said act entitled "An act to incorporate the Rhode Island Country Club" is hereby amended to read as follows:

"SEC. 3. No person shall hold, except as trustee of the corporation, more than two shares of said stock at the same time; and no stockholder shall sell any of said stock without first giving the corporation the right or option to purchase the same at the lowest price at which he is willing to sell for the period of sixty days before selling the same to any other party. The stock or shares of each and every stockholder shall be pledged and liable for all debts and demands due and owing from such stockholder to the corporation, whether overdue or due at a day future; and the shares of each and every stockholder shall be subject to sale or transfer, by the corporation or its board of governors in any manner and on any conditions provided by the by-laws. Such of the capital stock as shall be purchased by the corporation may be reissued."

SEC. 3. This act shall take effect upon its passage and all acts or parts of acts inconsistent herewith are hereby repealed.

JANUARY, 1911.

Approved
Mar. 14, 1911.

AN ACT TO INCORPORATE THE RHODE ISLAND COUNTRY
CLUB.

It is enacted by the General Assembly as follows:

SECTION 1. Charles H. Merriman, Frank W. Matteson, James R. MacColl, Frederick A. Chase, Harold J. Gross, Joseph U. Starkweather, Henry D. Sharpe, Benjamin A. Jackson, Edward L. Watson, Frederick A. Ballou, Henry A. Hoffman, Everett I. Rogers, William G. Titcomb, George M. Snow, Edward B. Jennings, William H. Hoffman, John R. Gladding, Foster B. Davis, Charles B. Owen, Ralph Colwell, Robert J. Jenckes, Robert P. Winsor, Herbert B.

Rust, Isaac B. Merriman, Frank H. Elmore, Kenneth F. Wood, and Albert A. Baker, their associates and successors, are hereby created a body corporate and politic for athletic, social and literary purposes, by the name of the Rhode Island Country Club, with the power to hold real and personal estate to an amount not exceeding one hundred and fifty thousand dollars, and the same to sell, dispose of, occupy, let, and to manage, at pleasure, as they may deem proper, and with all the powers and subject to all the duties and liabilities, so far as applicable, set forth in Chapter 213 of the General Laws, and of any acts in amendment thereof or in addition thereto.

SEC. 2. The capital stock shall not exceed one hundred and fifty thousand dollars, and shall be divided into shares of common stock of two hundred and fifty dollars each.

SEC. 3. No person shall hold, except as trustee of the corporation, more than two shares of said stock at the same time; and no stockholder shall sell any of said stock without first giving the corporation the right or option to purchase the same, at the lowest price at which he is willing to sell, for the period of sixty days before selling the same to any other party. The stock or shares of each and every stockholder shall be pledged and liable for all debts and demands due and owing from such stockholder to the corporation, whether overdue or due at a day future, and whether the same shall arise from installments, annual or semi-annual dues, or in any other manner, and said stock or shares may be sold for the payment of such debts or demands in such manner as the by-laws of the corporation may prescribe, or, if any such debts or demands shall be overdue for six months, or if any person shall become the holder of any stock of the corporation and shall not be

admitted as a member of said club, any board of governors of the corporation may transfer the stock of the delinquent stockholder or of such holder to the corporation, returning to such stockholder or holder the value of such stock, less the amount of any such debts or demands with interest thereon, such value to be determined by mutual agreement of the corporation and the delinquent stockholder or such holder, or by the last preceding sale of any share in the corporation. Such of the capital stock as shall be purchased by the corporation may be re-issued.

SEC. 4. Said corporation shall be located in the town of Barrington. The qualifications for membership in the corporation shall be such, as shall be prescribed by the by-laws. There shall be an annual meeting of the members of the corporation, in the town of Barrington or city of Providence, and at such time as prescribed from time to time by or pursuant to the by-laws, for the choice of officers and for such other business as may come before them, but the validity of this act and the existence of the corporation shall not be impaired by the failure to hold such meeting, but the business of such meeting may be transacted at any legal meeting of the corporation held thereafter.

SEC. 5. This act shall take effect on and after its passage.
