

SONS OF UNION VETERANS OF THE CIVIL WAR

REPORT OF THE NATIONAL COUNSELOR TO THE 122ND NATIONAL ENCAMPMENT

I have issued one formal opinion in the past year.

During the debate at the 121st National Encampment concerning the Military Service Medal, Brother Richard Orr stated on the floor of that Encampment, that authorizing the Military Service Medal would be a violation of our congressional charter. I disagreed at that time. The Encampment approved the medal.

Brother Orr and I have been discussing this issue since then. He consulted with a few attorneys, including a law professor. He then invited me to reevaluate my opinion. For assistance, I called upon Mary Ann Pierce, professor of clinical law at Detroit College of Law at Michigan State University. She operated a non-profit corporation clinic while a professor at my law school, then transferred to the OTHER law school in town, where she again teaches this stuff, by working with student interns and providing legal assistance to non profit corporations.

There is a doctrine in corporate law called “Ultra Vires”. This is defined as: “an ultra vires act denotes some act or transaction on the part of a corporation which, although not unlawful or contrary to public policy if done or executed by an individual, is yet beyond the legitimate powers of the corporation as they are defined by the statutes under which it is formed, or which are applicable to it, or by its charter or incorporation paper”.¹

The problem is that most corporate law is defined by state laws and the state courts, as corporations are 99.9% of the time, creatures of state law. There is just a handful of congressionally chartered corporations. Federal cases on corporate law are extremely rare. So, I had to consult various state court decisions in doing this study. As it stands today in general corporation law, most statutes allow corporations to place into their purpose clause, language to the effect that the corporation may engage in any lawful conduct.

Our charter does not have such general language. The congressional act that gives us life, also defines what we may do as an organization. Our purposes are set forth in our charter, as follows:

The purposes of the corporation are—

- (1) to perpetuate the memory of the Grand Army of the Republic and of the men who saved the Union in 1861 to 1865.

¹ Michigan General Corporation Act with Comments, Annotations and Forms, by Horace Wilgus – professor emeritus of corporation law at the University of Michigan law school and Burritt Hamilton, formerly president of the Michigan Bar Association.

- (2) To assist in every practicable way in preserving and making available for research, documents and records to the Grand Army of the Republic and its members;
- (3) To cooperate in honoring all those who have served our country patriotically in any war;
- (4) To teach patriotism, the duties of citizenship, the true history of our country, and the love and honor of our flag;
- (5) To oppose every tendency or movement that would weaken loyalty to, destroy, or impair our constitutional Union; and
- (6) To inculcate and broadly sustain the American principles of representative government, equal rights, and impartial justice for all.

What this means – that whatever we do, we must fit it within one of the above categories. I argued that recognizing our veterans who were not eligible for the war medal would be to further the 4th purpose – teach patriotism by setting up examples of patriotic people.

Based upon the discussion I have held with the good professor I mentioned above and after doing extensive reading on the doctrine of “ultra vires”, and the many, many court cases that discuss this doctrine – I have changed my opinion from that expressed at the last National Encampment. Teaching patriotism involves educational activities. Awarding medals to our members is not educational in nature. Therefore, it is my opinion that the adoption of a Military Service Medal is outside of the scope of our purpose clause and is therefore an “ultra vires” act. As such, we cannot legally engage in this activity.

Respectfully submitted in fraternity, charity and loyalty,

James B. Pahl

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National Counselor