

## **EXAMINER'S ANALYSIS OF QUESTION NO. 14**

### **Amendment of the Articles of Incorporation**

A corporation may amend its articles of incorporation if "the amendment contains only provisions that might lawfully be contained in the original articles of incorporation filed at the time of making the amendment." MCL 450.1601(1). A corporation may amend its articles of incorporation in order to "[e]nlarge, limit, or otherwise change its corporate purposes or powers." MCL 450.1602(b). Thus, the articles of incorporation of MPE may be amended to include marketing and selling barbecue rub, because that corporate purpose would have been proper originally. See also *Detroit & Canada Tunnel Corp v Martin*, 353 Mich 219 (1958). While selling barbecue rub is completely unrelated to selling pets and pet supplies, it is a legal enterprise and could have been included in the original articles of incorporation. Therefore, the mere fact that the subject areas have no apparent commonality does not invalidate the amendment.

As far as the procedure for approving the amendment to the articles of incorporation, MCL 450.1611(3) requires that the amendment be proposed by the board and approved by the shareholders (as further discussed below). The facts provide that the board proposed the amendment and submitted the amendment to the shareholders for approval. Further, MCL 450.1611(4) requires that notice be given to each shareholder entitled to vote "within the time and in the manner" provided for giving notice of shareholder meetings. MCL 450.1404(1) permits notice "not less than 10 nor more than 60 days" before the date of the shareholder meeting, and allows notice to be given "personally, by mail, or by electronic transmission." Thus, the 40-day notice provided by electronic transmission is adequate notice under Michigan law.

The articles of incorporation will be approved by the shareholders upon receiving "the affirmative vote of a majority of the outstanding shares entitled to vote on the proposed amendment . . . ." MCL 450.1611(5). Here, the facts state that the amendment was approved by a vote of 52 percent of the shares. Once the amendment is approved by a majority of the shares entitled to vote, a certificate of amendment must be filed with the state. MCL 450.1611(7); MCL 450.1631. Because all of this was done, the amendment to the Articles of Incorporation is valid.

### **Bill's right to receive payment for his shares from MPE**

A corporation generally has the power to repurchase shares pursuant to an agreement, but is not required to do so in the absence of one. MCL 450.1621(m). A shareholder who does not vote for (or consent in writing to) a proposed amendment of a corporation's articles may dissent and is entitled to receive payment for his shares, if amending the articles of incorporation either: (a) "[m]aterially alters or abolishes a preferential right of the shares having preferences;" or (b) "[c]reates, alters, or abolishes a material provision or right in respect of the redemption of the shares or a sinking fund for the redemption or purchase of the shares." MCL 450.1621(1)(a) & (b). No facts in the fact patterns indicate that amending MPE's articles of incorporation to include selling barbecue rub has any impact on Bill's shares or affects his redemption of his shares. Thus, he is not entitled to receive payment for his shares from MPE. See MCL 450.1621 and MCL 450.1762.

### **Shareholder agreement restricting share transfer**

Generally speaking, Bill is correct - "[t]he shares of a corporation are personal property and are transferable in accordance with" the Michigan Uniform Commercial Code, unless otherwise provided by the Business Corporation Act. MCL 450.1471. Pursuant to MCL 450.1472(1), a restriction on the transfer of corporate shares may be imposed by, among other things, "an agreement among any number of holders or among the holders and the corporation." The facts indicate that an agreement was entered into between Bill and Adam to sell their shares to each other in the event that either wanted to get out of the business. Thus, assuming the agreement was properly executed, the agreement comports with MCL 450.1471.

MCL 450.1473(a) explicitly permits restrictions on the transfer of shares of a corporation if the restriction "[o]bligates the holders of the restricted instruments to offer to the corporation or to any other holders of bonds or shares of the corporation . . . a prior opportunity to acquire the restricted instruments." Thus, if Bill wants to sell his shares of MPE, he must sell them to Adam in accordance with their agreement, despite the fact that Adam will have 76% of the shares.