

EXAMINERS' ANALYSIS OF QUESTION NO. 3

Validity of the amended Articles of Incorporation - a corporation may amend its articles of incorporation if "the amendment contains only provisions that might lawfully be contained in original articles of incorporation filed at the time of making the amendment." MCL 450.1601. A corporation is specifically permitted to amend its articles of incorporation in order to "[e]nlarge, limit, or otherwise change its corporate purposes or powers." MCL 450.1602(b). Therefore, the articles of incorporation of Brian's Bakery may be permissibly amended to include the manufacture and sale of pickles, so long as that purpose would have been lawful. Although pickle making and the other listed activities are not related to the cake baking business, dealing in pickles and pickle-related items is a *legal* enterprise and could have been included in original articles of incorporation filed at the time of making the amendment. Thus, the *topic* of the amendment is perfectly permissible.

The only remaining issue is whether the proper procedures were followed. MCL 450.1611(4) requires that notice "setting forth a proposed amendment to the articles of incorporation or a summary of the changes the proposed amendment will make" be given to each shareholder of record entitled to vote on the proposed amendment. Notice is to be given "within the time and in the manner" provided for giving notice of shareholder meetings. MCL 450.1404(1) permits notice of a shareholder meeting "not less than 10 nor more than 60 days" before the date of the shareholder meeting. Notice may be given "personally, by mail, or by electronic transmission." In this case, the 30-day notice provided to the shareholders by mail is sufficient under the statute.

The articles of incorporation are amended if the proposed amendment receives "the affirmative vote of a majority of the outstanding shares entitled to vote on the proposed amendment." MCL 450.1611(5). This is a higher voting requirement than the general requirement for shareholder approval, which is a majority of votes cast. MCL 450.1441(2). While these requirements "are subject to any *higher* voting requirements" specifically provided by law or contained in the articles of incorporation, the logical inference is that the voting

requirements may not be lower than provided in §1611(5). In this case, the facts indicate that Vicky and Rick collectively owned only 50% of the shares entitled to vote. Because the proposed amendment did not receive "the affirmative vote of a majority of the outstanding shares entitled to vote," the amendment was not validly adopted.

Validity of stock transfer to the charitable organization

- Pursuant to MCL 450.1472(1), a restriction on the transfer of corporate shares may be imposed by "the articles of incorporation, the bylaws, or an agreement among any number of holders or among the holders and the corporation." Moreover, MCL 450.1473(a) explicitly permits transfer restrictions 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 or to any other person or to any combination thereof, a prior opportunity to acquire the restricted instruments." Such a restriction existed in this case, permitting the right of first refusal prior to any transfer of stock. The facts indicate that the restriction was imposed by the articles of incorporation from the time of the corporation's founding in 1998. Therefore, the transfer restriction is applicable to Brian's shares of BCB stock.

However, this does not necessarily mean that the restriction is effective against the charitable organization. Whether the restriction is effective against the charity depends upon (1) whether the restriction is "noted conspicuously" on the stock certificates Brian gave to the charity or (2) in the absence of such notation, whether the charity had actual knowledge of the existence of the restriction. MCL 450.1472(2) provides that if the restriction is "noted conspicuously on the face or back of the instrument," the restriction may be enforced against the holder or his successor or transferee. Without the notation, the otherwise enforceable restriction is "ineffective except against a person with actual knowledge of the restriction." Here, the facts reveal that the restriction was conspicuously placed on the face of the stock certificates, in fact it was in bold writing. Consequently, the restriction is enforceable against the charity.