



SMALL BUSINESS & NONPROFIT CLINIC

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Scope of authority for officers in the absence of bylaws.

Issue:

What is the scope of authority for officers of a corporation in the absence of bylaws.

Conclusion:

An officer is held to a duty of care and a duty of loyalty to the corporation. While acting within their duties to the corporation, officers have apparent authority to bind the corporation on matters that are within the “ordinary course of business” and need board approval for extraordinary transactions.

Analysis:

An officer is held to a duty of care and a duty of loyalty. Within the duty of care, the officer is responsible for their actions as well as their inaction. Most officers typically enjoy the deference of the “business judgment rule” which means that a court will generously defer to the officers or board members on business decisions. *Joy v. North*. This is usually the case because courts do not want to usurp a business decision when those involved are more experienced and well-versed in their line of work. Also, courts do not want to tell business how the business should be run. If there was a rational basis for their decision and there was no fraud, illegality or conflict of interest then the court will usually invoke the business judgment rule. Officers and board members also have the duty to adequately study the decisions before acting. Officers also are responsible to monitor the actions of those who they supervise for this rule to apply. In accordance with the duty of loyalty officers are liable for acting out of greed and putting their own interests ahead of the interests of the corporation or its shareholders.

Because the scope of the officers is defined in the bylaws, in the absence of such, the scope of the officers falls under common law. Officers perform day to day management of the corporation under the delegation of the board. The decisions of the officers are binding so long as they fall within their authority. Officers have actual authority from the board on whatever issues designated in the bylaws and indemnity is provided for those decisions. In the absence of bylaws, officers have apparent authority when the particular matter is part of the ordinary course of business. If the matter is an extraordinary transaction outside of the scope of ordinary business for an officer then the officer must get approval from the board. Apparent authority is a weaker authority, but still can bind the corporation.

In conclusion, an officer's scope of responsibility is limited to matters of ordinary course of business within their apparent authority.