

before the termination of his present term, would fall within the terms of the section of the Constitution, *but when enacted prior to his appointment, and prior to his term, is not within the constitution inhibition.*" (Our emphasis.)

Carter v. State, 77 Okla. 31 on 34, 186 Pac. 464.

To same effect see:

State ex rel. v. Porter, 57 Mont. 343, 188 Pac. 375.

In conclusion, it is my opinion that the present incumbent county surveyor of St. Joseph County, Indiana, is entitled to the increased salary provided in Chapter 305, Acts 1943.

SECRETARY OF STATE, Corporation Division; not-for-profit corporation; initial meeting for organization may be held without the State of Indiana.

April 24, 1944.

Opinion No. 43

Hon. C. Warren Day,
Chief Corporation Counsel,
Office of Secretary of State,
Indianapolis, Indiana.

Dear Sir:

I have your letter of April 15th in which you request an official opinion on the following question:

"May the initial members of a proposed corporation to be organized pursuant to Chapter 157 of the Acts of 1935 (Section 25-507—25-542, Burns' 1933 Supplement) hold their organization meeting, for the purpose of designating the incorporators and electing the first board of directors, outside the State of Indiana?"

The general rule in regard to corporate meetings is that the corporation being an entity created by the state may exercise its corporate functions only in the state.

Bank of Augusta v. Earle, 13 Pet. 519 at 588;
Miller v. Ewer, 27 Me. 509, 46 Am. Dec. 619;

Hening v. Hagedorn v. Glanton, 108 S. E. 256
 (Ga. App.);
 5 Fletcher Encyclopedia Corporations, Sec. 2003.

In the Miller case, *supra*, the court said at page 624 of 46 Am. Dec.:

“* * * That clause in the charter of the Bluehill Granite Company, which authorizes two persons named to call the first meeting of the company, at such time and place as they may think proper, can not receive such a construction, as would authorize them to call the meeting at a place without the limits of this state.”

To the general rule there are several exceptions. One arises when the state permits by statute the doing of corporate acts outside the state.

See:

Graham v. Boston, H. & E. R. Co., 118 U. S. 161.

Another arises with respect to non-profit corporations. First enunciated in connection with corporations for profit, it was repudiated generally as to non-profit corporations in the early case of Derry Council No. 40 v. State Council of Pa., 47 A. 208 (Pa.). In deciding that case the court recognized the common practice and desirability for such corporations to hold their annual meetings in different states. That case was followed in *People ex rel Hoyne v. Grant*, 119 N. E. 344 (Ill.), involving The American Medical Association wherein the court says at page 345:

“* * * The life and success of such corporations (not for profit) depend upon their being able to hold, and in holding, meetings and transacting business at various places selected throughout the United States.”
 (Parenthesis ours.)

In *George v. Holstein-Friesian Ass'n of America*, 144 N. E. 776 (N. Y.), it was said at pages 778 and 779:

“* * * Generally the courts of other jurisdictions have held that membership corporations not organized for profit may hold meetings outside of the state if permitted by the corporate by-laws or on slight evidence

they have found in the corporate charter some indication of a legislative intent to give such power to particular corporations." (Citing cases.)

"* * * No definite public policy against corporate action without the state can be deduced from the absence of such authority expressly conferred by the Legislature,"

and the exception is now well established, as stated in 5 Fletcher Cyclopedia Corporations, page 31:

"The general rule invalidating corporate meetings held outside of the state does not apply to nonstock membership or fraternal corporations having power to organize subordinate bodies or lodges outside of the state." (Citing cases.)

Those cases are in the absence of express statute. In Indiana, the right of a not for profit corporation to hold meetings out of state is made clear by statute. Section 4, subsection (6), Chapter 157, Acts of 1935 (25-510 (6), Burns' 1933 Supplement) provides:

"To carry out its purposes in this state and elsewhere; to have one or more offices out of this state; and to acquire, own, hold and use, and to lease, mortgage, pledge, sell, convey or otherwise dispose of property, real or personal, tangible or intangible, out of this state;"

and subsection (a) of Section 9 of the same act (25-515 (a), Burns' 1933 Supplement) provides:

"All meetings of members shall be held within this state at the principal office of the corporation, unless otherwise provided in the articles of incorporation."

This amounts to a declared policy to permit corporate acts outside the state. It is clear that under Indiana law, a not for profit corporation may hold meetings and exercise its corporate functions outside the state.

The only remaining question is whether there should be any distinction made between the initial meeting of the incorporators and later meetings of the corporation.

There is some authority to the effect that the initial meeting must be held in the state of incorporation.

See:

Miller v. Ewer, *supra*;
5 Fletcher Cyclopaedia Corporations, Sec. 2003.

However, that a corporation or the incorporators may exercise only such acts outside the state as are either expressly or impliedly permitted by the state is fundamental and the basis for the above decisions. Logically, if subsequent acts of the corporation under a general corporation statute are permitted without the state, there is little reason why the initial steps to incorporate may not be undertaken in another jurisdiction, provided the organization is completed in all other respects as provided by law. That conclusion is strengthened so far as our law is concerned by the declared policy to permit meetings out of the state where so provided in the articles of incorporation and by Section 17 of Chapter 157, Acts of 1935 (25-523, Burns' 1933 Supplement), which provides:

"When three (3) or more persons shall have signed such membership list, the person or persons causing such membership list to be opened shall call a meeting of the members for the purpose of designating the incorporators and for the purpose of electing the first board of directors to be named as such in the articles of incorporation and shall give at least ten (10) days' notice by mail to each subscribing member of the time and place of such meeting. The giving of such notice may be waived in writing. The subscribing members shall meet at the time and place designated in the notice and shall elect the first board of directors of the corporation. At such meeting each subscribing member shall have one (1) vote."

I am therefore of the opinion that the initial meeting of a not for profit corporation to be incorporated in Indiana may be held outside the state.