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OF

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January 7, 1969

Dr. Hector P. Garcia  
1315 Bright Street  
Corpus Christi, Texas 78405

Dear Doctor:

We have had an opportunity to check into the law applicable concerning the refusal of the local SER Board to seat the duly elected GI Forum representatives as directors. Our research indicates that this action of the SER Board is illegal.

The bylaws of Jobs for Progress, Inc., provide that they are effective as of the date of their adoption. You will note that on the last page it is provided:

"That the within and foregoing By-Laws were adopted as the by-laws of said corporation on the \_\_\_\_\_ day of August, 1966, and that the same do now constitute the by-laws of said corporation."

The by-laws were specifically adopted in full and the Articles of Incorporation, Art. V:

"The conditions, terms and qualifications for membership, and the operation of this corporation shall be as provided for in the By-Laws of the corporation and as directed by the Board of Directors."

Although contracts, adoption of by-laws, and other actions taken by promoters or incorporators of a corporation are generally not binding on the corporation, it is clear that pre-incorporation contracts become binding when adopted by the corporation. Trinity Fire Ins. Co. v. Kerrville Hotel Co., 129 Tex. 310, 103 S.W.2d 121 (1937); 14 Tex. Jour. 2d Corporations, §27, p. 152.

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In the Kerrville Hotel Co. case the promoters of a corporation entered into a contract on June 11, 1926, in the name of the Kerrville Hotel Co., a corporation. The corporation was not actually chartered until sometime after the execution of the contract, but after the incorporation of the company, it in all things ratified, adopted and carried out the contract. The Supreme Court said:

" . . . Under such a record, even though the contract of June 11, 1926, did not bind the corporation when it was made, still when it subsequently adopted and ratified same, after it was chartered, it made such contract in all respects what it would have been if the requisite corporate power had existed when it was entered into. Whitney v. Wyman, 101 U.S. 392, 25 L. Ed. 1050; 10 Tex. Jour., pp. 604, 605, §14; Bonham Cotton Press Co. vs. McKellar, 86 Tex. 694, 26 S.W.2d 1056; Breckenridge City Club v. Hardin, (Tex. Civ. App.) 253 S.W. 873; Dealers' Granite Corporation v. Faubion (Tex. Civ. App.) 18 S.W.2d 737; Phil H. Pierce v. Rude, (Tex. Civ. App.) 291 S.W. 974; Hart-Toole Furniture Co. vs. Shahan (Tex. Civ. App.) 220 S.W. 181." (103 S.W. 2d at p. 126).

This being the law, it is clear that when the promoters and organizers of Jobs for Progress, Inc., adopted the by-laws, which fixed the term of directors at two years, and provided for the immediate effectiveness of the by-laws, the by-laws were a contract, entered into by promoters of the corporation, and not binding on the corporation at that date. However, the by-laws were specifically adopted in full in the Articles of Incorporation, and therefore became binding, retroactively, upon the corporation. Since the by-laws were adopted in full, effectiveness must be given to the provision providing for their immediate effectiveness as of the date of their adoption in August, 1966.

For this reason, it is clear that the terms of directors began immediately upon their election, even though the corporate

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charter was not issued until several months later, and that, when the charter was issued, the corporation adopted and ratified the action of the incorporators in adopting the by-laws and installing officers and directors at the earlier date.

Please let me know the wishes of the local GI Forum groups concerning this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'James De Anda', written in black ink.

JAMES DE ANDA

JDA:sg