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New York, July 23, 1917.

Gentlemen:

You have requested our opinion concerning your present title to office as Directors of the Watch Tower Bible and Tract Society, and concerning the views as to the law expressed by Mr. Rutherford in his "Statements of Facts and Points," a copy of which you have received.

As to the proposition which is so much emphasized in Mr. Rutherford's "Statements" that even if his course of conduct in ousting, as he claims, you four gentleman, a majority of the Board, from your Directorships, was wrongful and in violation of law, the matter cannot be redressed in the New York courts, it is enough to point out that he, in his own statement says:

"In 1909 said Watch Tower Bible and Tract Society removed its activities from the State of Pennsylvania to the State of New York; and since that time it has transacted no business of consequence in the State of Pennsylvania, and never had a meeting of its Board of Directors in said State during that time."

If this be so, it goes without saying that the courts of the State of New York have ample jurisdiction to see to it that the affairs of the corporation, which, according to Mr. Rutherford's own admission, are being conducted almost entirely within the State of New York, are not taken out of the hands of a majority of its Board of Directors and turned over to other men whom the President chooses to appoint and regard as Directors. No lawyer familiar with the New York law would have any difficulty in finding legal methods of preventing the usurpers from exercising control over the affairs of the corporation in this State.

The second proposition in Mr. Rutherford's "Statements," to-wit, that the affairs of the corporation could not be brought before the courts in the State of New York, because it is no registered in this State, would involve, if true, very disastrous consequences for the corporation, in view of Mr. Rutherford's own admission that all of its affairs are being substantially transacted in this State. If, in truth, it be an outlaw here – if, in truth, its affairs are not under the protection of the State of New York – it is easy to see that the corollary of the proposition that it is not competent to be sued in the courts of this Sate, is that for the same reason it is not competent to sue, and that in consequence its affairs, its disregard of the constituted Board of Directors, whose presence in office had expressed the will of Pastor Russell and of the membership of the corporation for years.

As a matter of law, however, it is utter fallacious to say that because the statutes of this State provide no means for registering a foreign membership corporation, that therefore such corporation in transacting affairs here is not subject to the courts of this State. All corporations may lawfully carry out within this State the purposes of their charters and may exercise such powers incidental thereto as may be fairly necessary, unless otherwise forbidden by the laws of this State; and the requirements of the statutes of this State for registry apply only to foreign stock corporations. (Demarest vs. Flack, 128 N. Y. 205.) That the Watch Tower Bible and Tract Society is not a foreign stock corporation within the meaning of the statutes of this State is shown by the following definition in Section 3 of the General Corporation Law:

"A stock corporation is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely

certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation."

Pastor Russell, therefore, was not so ill advised as to the law, that in conducting the affairs of the corporation in this State since 1909 (as Mr. Rutherford himself says) he committed the mistake of placing those affairs outside of the protection of courts of justice.

The third proposition made by Mr. Rutherford is that the provision in the charter of the Watch Tower Bible and Tract Society, approved in 1884 and still incorporated in the said charter, that "the members of the Board of Directors shall hold their respective offices for life," is invalid, since the statute of the State of Pennsylvania, providing that Directors shall be chosen annually by the stockholders or members, is said to be applicable to this corporation. It is a little surprising that one who for years was connected with the management of this corporation should not have discovered this alleged illegality until after the death of Pastor Russell, and then for the first time should bring forward a claim which is well calculated to subvert the whole scheme of government as planned and desired by Pastor Russell, and should use that claim to justify the possession of power in himself alone to oust a majority of the Board of Directors and to fill their places, notwithstanding that a number of the persons whom he thus seeks to exclude held that office for years with the acquiescence and approval both of Pastor Russell and of the membership of the corporation. In this connection it is significant that the charter of the Society is endorsed, as required by Pennsylvania law, with a certificate of an Associate Judge of the Common Please that such judge had examined the charter and found the same "to be lawful and not injurious to the community," and that therefore the incorporators and their associates were entitled to have leave to be a corporation for the purposes and upon the terms therein stated.

Even if, however, an election or appointment "for life" could not lawfully be made, your right to office would not be in any way affected, since no successors to you have been chosen by the members of the corporation. Assuming, for the sake of argument, that as Mr. Rutherford claims, the Pennsylvania statutory provision that "Directors shall be chosen annually by the stockholders or members," has some application to this corporation, there would then come into play the very next clause in the statute, to wit, that such Directors or Trustees "shall hold their office until others are chosen and qualified in their stead." As the members of the corporation have never chosen anyone in your place, your terms of office would (if the statute cited by Mr. Rutherford were applicable) be extended beyond the expiration of one year until such time as successors chosen, not by Mr. Rutherford, but by the members of the corporation, should qualify. Even if the term for which you had been elected were longer than the law allowed, you would not thereby be disqualified from holding office during the lawful period.

Furthermore, this provision of statute that Directors do not lose office solely because of the failure of the members of the corporation to appoint their successors, but continue until such time as the successors have been appointed and qualify, is merely expressive of the common law rule on the subject, and hence would be applicable to your case, even though the statute which we have been discussing be not applicable to the corporation.

As to the claim that at least three Directors must be residents of the State of Pennsylvania, it would seem to be enough to reply that if this be so, the defect in title to office would apply to the entire Board of Directors and not merely to such individual members thereof as Mr. Rutherford (not himself a resident of Pennsylvania) might choose to consider affected by such disqualification. We are, however, unable to find any provision of Pennsylvania law enacted when this charter was adopted or which affects this charter which makes it mandatory that a certain number of Directors in a membership corporation (as is this one) shall be residents of the State of Pennsylvania.

As to the claim that Mr. Rutherford, as President, is "the executive officer and General Manager" of the corporation, and as such "has the legal right to manage the corporation," we cannot but feel that the conclusion which is sought to be reached from the development of this claim, to wit, that as "Manager" he may fill the Board of Directors with his own appointees, is founded on the use of the word "Manager" in a double sense. The term "Manager" of a corporation is the title of an office thoroughly well known to the law and in the business community; and it has never been thought before that this office was in any way connected with the appointed of Directors. It has to do solely with the executive management, and the Manager is the representative and executive officer of the Directors and not the overlord or source of power. The argument that the incumbent of the office of Manager has the "legal right to manage the corporation" is of course unsound, if the word "manage" is meant to imply the exercise of all the powers of the corporation, including the right to appoint Directors.

As to the filling of vacancies, it is enough to say that if Mr. Rutherford is right in his contention that certain portions of the charter are invalid because of the statute laws of Pennsylvania as to corporations, then he is wrong in his contention that as President or Manager of the Society he has the right to fill vacancies, because this statute expressly provides that "in case of the death, removal or resignation of the President or any of the Directors, Treasurer or other officer of any such company, the remaining Directors may supply the vacancy thus created, until the next election." Furthermore, even aside from this statute and taking the charter solely by itself, he has no right to fill your places, since "vacancies" have not occurred in your respective offices, and also because in the event of any such vacancy it would have been his duty, or the duty of any other president, to call the Board together in special meeting, and he could not deprive the Board of such power and obtain it for himself merely by failing to call a special meeting for such purpose.

But even if for any reason your original title to office might have legal defects, you, or at least three of you, have been in office so long and your title to office has been so long recognized by the entire membership of the corporation and by its late President, that you are no de facto Directors, even if not de jure Directors.

Finally, it is important to observe that if the provision of the Pennsylvania statute that directors shall be chosen annually, had the effect which Mr. Rutherford claims, to wit: as rendering vacant the office of every director at the end of one year, he himself would have no title to his office as director or as President, for the charter requires that the President "shall be chosen from among the members of the Board annually." Mr. Rutherford claims that because he was elected by the members of the corporation to be President, such election constituted impliedly an election of him as a director, although he was not expressly so elected. This claim has been overruled by our Court of Appeals in a similar case (People ex rel Nicholl vs. New York Infant Asylum, 122 N. Y. 190.) If he were not in fact a director, the mistake of the members of the corporation in supposing that he was already a director and therefore eligible to be President, would not render him eligible in law to be president or constitute him a lawfully elected director. For this and other reasons, we are of the opinion that he propositions of law advance by Mr. Rutherford, would, if sound and pushed to their logical conclusion, defeat his own title to office as director and president.

Very truly yours,

DAVIES, AUERBACH AND CORNELL

TO:

MESSRS.
A. I. RITCHIE,
J. D. WRIGHT
I. F. HOSKINS,
R. H. HIRSH.