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Compensation of Promoters

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DIGEST—NOTE.

(*Van Zandt v. St. Louis Wholesale Grocer Co.*, 190 *S. W.* 1050, *Mo. App.*)

X attempted to interest a Grocers' Association in the formation of a corporative wholesale grocer company, in which the retail grocers were to be the stockholders. He stated that his compensation for organizing this corporation would be a specific amount on each subscription of five shares obtained by him, and a certain per cent. of the gross sales of the Company during the first five years of its incorporation. The proposal was rejected by the Association and X interested certain persons in the proposed corporation. A "paper association" was organized and "paper officers" were selected. The Company was incorporated.

A controversy arose between the promoter, the "paper officers" and the corporation, relative to the compensation X was to receive. X claimed that he was to receive in addition to a stated compensation per subscription, one-half of one per centum of the gross sales of the Company during the first five years. The "paper officers" and the corporation claimed that this compensation of one-half of one per centum of the gross sales was not considered in the promoter's proposal to them, and that it was agreed between the parties he was to receive a stated amount per subscription.

Suit was instituted and the jury found in favor of the plaintiff and against the corporation. The cause was appealed and the Appellate Court held that the evidence did not disclose an agreement as contended by X, and, further, that a corporation is only liable for the services of a promoter rendered to it when those services are adopted by the corporation after its formation; that services rendered by a promoter in obtaining subscriptions to stock in a corporation are of a different nature, and are governed by a different rule than the services of an attorney in drawing up the articles of association and the services of an attorney in connection with the same; that the adoption by the corporation of the acts of the promoter *must be signified by some action other than the mere act of becoming a corporate body; that the mere act of becoming a corporate body is not an act showing an adoption of these services so as to bind the corporation and make it liable to compensate the promoters for obtaining the subscription to its stock.* That the promoters of a corporation do not have the power to pledge the corporation to a payment for services in procuring subscriptions to the capital stock of the Company, when they do not constitute a

majority of the subscribers; that the stockholders who pay a fair price for their stock without knowledge as to an agreement to compensate a promoter, or incumber the corporate assets by an agreement to compensate a promoter, take their stock free from such an encumbrance; that to allow compensation to a promoter by reason of the acts of other promoters would allow the encumbrance on the corporate assets to such an extent that it might "kill" the organization at its start.

This case limits the rule laid down in *Taussig v. Railroad Company*, 166 Mo. 28, 186 Mo. 269, where the court apparently said that, when the promoter rendered services under such circumstances as to imply that the parties expected or ought to have expected that compensation should be paid, the promoter or officer is entiled to receive compensation.

The Taussig case as limited by the Van Zandt case above, allows recovery by a promoter for the sale of visible tangible property which the corporation accepts and uses, and for services other than obtaining stock subscriptions when such property or services are adopted by acts of the corporation other than merely becoming a corporate entity. This is a proper limitation on the Taussig case, and allows the corporation to accept the benefits of contracts made in its behalf by only assuming such burdens as necessarily follow the contract, and not independent burdens which do not appear on the face of the contract.

Some courts have allowed compensation for services similar to those rendered in the Van Zandt case, on the theory that the corporation by accepting the benefits of a contract, must assume the burdens, and that one of the burdens is the compensation of the promoters. The fallacy of this reasoning is that the corporation by accepting the stock subscriptions, makes a contract with the subscriber to the stock, and the promoter does not appear in this contract, so that his compensation is not a burden incident to the contract.

The Van Zandt case does not deny recovery to the promoter, where he appears as a contracting party. This should be the true test in all cases relative to promoter's compensation, viz.: his appearance as a contracting party. Thus a corporation will be informed of the claims of the promoter when accepting the benefits of contracts made for it by promoters.

The Van Zandt case while not discussing the *cum onere* doctrine as described in 7 R. C. L., page 75, nevertheless indicates that the citation of the Taussig case there made is ill advised.

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