

December 2019

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Recommended Citation

Robert A. Gish, Jr., *Issuance of Par Value Stock for Services under the Wyoming Corporation Law*, 11 Wyo. L.J. 36 (1956)

Available at: <https://scholarship.law.uwyo.edu/wlj/vol11/iss1/4>

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ISSUANCE OF PAR VALUE STOCK FOR SERVICES UNDER THE WYOMING CORPORATION LAW

The original Wyoming statute on issuance of par value stock, enacted in 1876,¹ provides for the issuance of stock for mines, manufactories and other property necessary for the business. The statute on issuance of no par value stock, enacted in 1929,² provides that no par stock may be issued for such consideration in labor done, services performed or money or property actually received. This leaves the problem of whether par value stock may be issued for services performed.

The common law rule was that if an agreement was such that there was a bona fide debt on one side to pay for services and a bona fide liability on the other side to pay money for shares, so if money had been handed from one side of the table to the other in payment of the stock, which might legitimately have been handed back in payment for the services, there was no need of the money being handed over and taken back again.³ Later the rule was that stock could be paid for in money or money's worth.⁴

The original rule in the United States was an agreement to pay for subscriptions in anything except money would be treated as a fraud on the rest of the stockholders and payment in money would be enforced.⁵ A few early cases held, in the absence of a charter provision, payment for stock could be in money only.⁶ At the time the Wyoming legislature enacted the original statute,⁷ the prevailing rule in the United States, in the absence of statute, was stock could be issued in return for money or what may fairly be considered as money's worth.⁸ One early case held, in the absence of express statutory provision, a corporation has the same "power of disposition" over its unsubscribed capital, as any ordinary owner.⁹ Another decision, in a state which had a statutory requirement

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1. Wyo. Comp. Stat. § 44-126 (1945) (enacted in 1876): "The directors of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls, neither shall the holders thereof be liable to any further payments under the provisions of Sections 3038 and 3045 (Wyoming Revised Statutes of 1899, since repealed), but in all statements and reports of the company this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts."
 2. Wyo. Comp. Stat. § 44-120 (1945) (enacted in 1929): "... may be issued by the corporation from time to time for such consideration in labor done, services performed, or money or property actually received, as may be determined from time to time by the board of directors, unless otherwise provided in the certificate of incorporation or amendment thereof; and any and all such shares so issued shall be deemed full paid stock and not liable to any further call or assessment thereon, and the holder of such shares shall not be liable for any further payments in respect thereto; . . ."
 3. Spargo's Case, L.R. 8 Ch. App. 407 (1873).
 4. Drummond's Case, L.R. 4 Ch. App. 772 (1869).
 5. Henry v. The Vermillion & Ashland Railroad Co., 17 Ohio St. 187 (1848).
 6. Neuse River Navigation Co. v. The Commissioner of New Bern, 52 N.C. (7 Jones Law) 213 (1859).
 7. Wyo. Comp. Stat. § 44-126 (1945) (enacted in 1876).
 8. Weatherbee v. Baker, 35 N.J. Eq. 501 (1882).
 9. The Dayton & Cincinnati Railroad Co. v. Hatch, 1 Disn. 84 (Ohio 1855).

that one-half of the capital stock must actually be paid in lawful money of the United States, held the statute to be substantially complied with if the corporation receives property whose market value is greater than the par value of the stock.¹⁰ Still another decision held such stock would not be deemed fully paid unless such services, shall, at the time, be the fair equivalent of the stock's par value.¹¹

The case of *Turner v. Fidelity Loan Concern*,¹² where services were rendered for capital stock issued, held the stock was fully paid if the services rendered were at least equal to the par value of the stock. There was no statute on the subject in California, at the time of the decision.

Where promoters of a corporation issued stock to themselves at two per cent of its par value, in consideration of services to be performed, it was held, in the case of *Vineland Grape Juice Co. v. Chandler*,¹³ even where the law does not permit stock to be issued for services to be performed, but the services are subsequently performed, a corporation cannot attack the transaction in a court of equity, without, at the same time, rendering itself liable to the parties for the value of the services performed.

In the majority of the early decisions, where there was no statutory provision on the subject, no distinction is made between property and services, the same rules applying to both.¹⁴ One case held, in the absence of statutory provision, that capital stock could be issued in exchange for property received and services actually rendered, but the mere absence of fraud in the transaction does not mean that the amount of consideration may be disregarded.¹⁵

In the Wyoming case of *Natwick v. Terwilliger*,¹⁶ the supreme court, citing Cook on *Stockholders and Corporation Law*,¹⁷ discussed conditions to a subscription for stock and stated that such a subscription may be conditional on the corporation accepting payment in labor or materials. The court seems to imply that payment may be made in either way, although the case does not specifically decide the issue.

In the case of *Lea v. Cutrer*,¹⁸ the Mississippi court held, where a statute provided that stock should be paid for in cash, the word cash is used, not to designate the medium of payment, but as a term meaning the opposite of credit.

In the case of *Terrell v. Warten*,¹⁹ it was held, where a contract was

10. State v. Wood, 13 Mo. App. 139 (1884).

11. Shepard v. Drake, 61 Mo. App. 134 (1895).

12. 2 Cal. App. 122, 83 Pac. 62 (1905).

13. 80 N.J. Eq. 437, 85 Atl. 213 (1912).

14. The Philadelphia & Westchester Railroad Co. v. Hickman, 28 Pa. St. (4 Casey) 318 (1857), Shepard v. Drake, 61 Mo. App. 134 (1895).

15. Woolfolk v. Johnson, 131 Mo. 620, 33 S.W. 432 (1895).

16. 24 Wyo. 253, 160 Pac. 338 (1916).

17. 1 Cook on Stockholders & Corp. Law, 3rd Ed. § 83 (1894).

18. 96 Miss. 355, 51 So. 808 (1910).

19. 206 Ala. 90, 89 So. 297 (1921).

made for stock to be issued in return for services to be performed, violating the Alabama constitution, which provided that stock could be issued only for labor done, the subscriber was not liable to pay cash. The court's reasoning was, that he shouldn't be liable to pay money not contemplated by the only contract ever attempted or intended to be made between the parties.

Wyoming is the only state which still has its original statute on the subject.²⁰ All of the other states have either statutory or constitutional provisions which provide for the issuance of stock for services. Examples of these are: Delaware,²¹ Colorado,²² Florida,²³ California,²⁴ Illinois,²⁵ and Oklahoma.²⁶

From the predominant weight of authority, if this problem should arise in Wyoming, it would seem that if the services rendered were equal to the par value of the stock, the decision would be for the legality of such issuance.

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20. Wyo. Comp. Stat. § 44-126 (1945) (enacted in 1876).

21. Del. Rev. Code 1935 § 14, Bus. Corp. Man. 1953, p. 452: "Subscriptions to, or the purchase price of, the capital stock of any corporation organized or to be organized under any law of this state may be paid for, wholly or partly, by cash, by labor done, by personal property, or by real property or leases thereof; and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, nor shall the holder thereof be liable for any further payments under the provisions of this chapter. And in the absence of actual fraud in the transaction, the judgment of the directors, as to the value of such labor, property, real estate or leases thereof, shall be conclusive. . . ."
22. Colo. Const., Art. XV, § 9, Bus. Corp. Man. 1953, p. 337: "No corporation shall issue stocks or bonds, except for labor done, service performed, or money or property actually received, and all fictitious increase of stock indebtedness shall be void."
23. Sec. 612.11 F.S. 1949, Bus. Corp. Man. 1953, p. 536: "Shares of stock other than shares without nominal or par value may be issued only for a consideration having a value, in the judgment of the board of directors of the corporation, at least equivalent to the full par value of the stock so to be issued; and in the absence of fraud in the transaction, the judgment of the directors as to the value of any such consideration shall be conclusive.
24. Corp. Code, § 1109, Bus. Corp. Man. 1953, p. 210: "No shares of stock, with or without par value, shall be issued except in consideration of any or all of the following:
- (a) Money paid.
 - (b) Labor done.
 - (c) Services actually rendered.
 - (d) Debts or securities canceled.
 - (e) Tangible property actually received by the issuing corporation.
 - (f) Amounts transferred from surplus to stated capital upon the issue of shares as a dividend.
- This section does not forbid . . ."
25. Ill. Rev. Stat. 1949, chap. 32, par. 157.17, Bus. Corp. Man. 1953, p. 765: "Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board of directors. . . ."
26. 18 O.S. Supp. 1949, § 76, Bus. Corp. Man. 1953, p. 2178: "No shares of a domestic corporation, with or without par value, shall be allotted by such corporation except in consideration of money or property, including intangibles, actually received, labor or services actually performed, shares, securities, or other obligations of the corporation actually surrendered, canceled, or reduced, or funds or other assets transferred from surplus to stated capital upon the allotment of a share dividend. . . ."