



CSU
College of Law Library

Cleveland State Law Review

Volume 19
Issue 2 *Non-Profit Organizations' Impact on
U.S. Society*

Article

1970

The Not-for-Profit Business Corporation

James K. Weeks

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>



Part of the [Business Organizations Law Commons](#), and the [Taxation-Federal Commons](#)

[How does access to this work benefit you? Let us know!](#)

Recommended Citation

James K. Weeks, *The Not-for-Profit Business Corporation*, 19 Clev. St. L. Rev. 303 (1970)
available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol19/iss2/33>

This Article is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

The Not-For-Profit Business Corporation

James K. Weeks*

WHILE THE DISTINCTION may appear to be a mere matter of semantics, the gulf between "non-profit" and "not-for-profit" corporations, both as to function and legal rules governing them, is very real indeed. The Non-Profit Corporation is usually regarded traditionally from a lay and legal viewpoint as one being engaged in charitable, educational, scientific or social work or a religious endeavor. On the other hand, the Not-for-Profit Corporation is more often engaged in enterprises usually associated with functions of a business corporation. However, as soon as one begins to view these corporations from a definitional standpoint, one is bogged down in an incredibly complicated procedure which does little to clarify the confusion. The better approach is to view the differences from an operational or functional standpoint. This is best illustrated in the case of *Shaker Medical Center Hospital v. Blue Cross of Northeast Ohio*,¹ which as far as the name and organization was concerned appeared to be non-profit, but when the court applied a functional test it held:

The determination must be made by what the Plaintiff *does* rather than what it professes to be.

Increasingly, the basis for making an initial determination is to ascertain that the given organization is functioning within the broad definitional category of "charitable or non-profit activities." A favorable finding of this, however, does not insure "non-profit" status, but merely provides a starting point. Since the non-profit organization is generally governed by a statute which prevents, by negative inference, doing business as a business corporation, many of the modern uses for the true "not-for-profit" organization are precluded; and if not precluded, are unduly restricted by the current statutes, with the exception of the Model Non-Profit Corporations Act,² and the new New York Not-For-Profit Corporation Law³ [effective September 1, 1970] (hereinafter noted as NPCL) which specially address themselves to the problem of conducting income producing activities. Sec. 508 of the NPCL provides:

A corporation whose lawful activities involve, among other things, the charging of fees or prices for its services or products shall have the right to receive such income and, in so doing, may make an incidental profit. . .

* Professor of Law, Syracuse University College of Law.

[Note: This is one of the Symposium papers.]

¹ 115 Ohio App. 497, 183 N.E. 2d 628 (Cuyahoga County, 1962).

² 1964 Revision, ALI-ABA Joint Committee on Continuing Legal Education.

³ Chapter 35 of Cons. Laws of New York, eff. 9-1-70.

Although restrictions are placed upon the division or distribution of this income, such statutory recognition of profits opens the door to greater flexibility in operations by NPC's which hitherto had been denied or at least made hazardous by uncertainty of judicial construction. At least in New York it may be said that Sec. 508 is largely a codification of the existing case law. It does remove some of the previous need for great ingenuity which was employed to create business facilities in spite of the lack of express statutory authorization. For example:

Membership corporations desiring to provide housing facilities for the aged were apparently incapable of incorporating for that purpose under existing law if a profit element was involved in such operations. However, incorporating for purposes of rendering services to the aged was permissible, and if housing facilities are regarded as incidental to and an implied power resulting from the general purpose of the corporation to care for the aged, it was regarded as all right.

Final legislative recognition of the right to make "incidental profits" at least injects a note of honesty if nothing else. It is my feeling, however, that much more is in fact accomplished. For instance, it has swept away the continued need for a myriad of special acts (although, parenthetically, it should be noted that special acts may still be needed for some unforeseen contingency and are permitted) which had been used to establish the non-profit business corporation, particularly in the field of private housing and community development. These types are now covered in New York by the definition of the Type C Not-For-Profit Corporation—"this type may be formed for any lawful *business* purpose."

Traditional definitional classifications are still maintained in the statutory Types A and B, but the statutory emphasis is upon *function* rather than organization.

While definitional categories may remain useful to gain initial bearings, the practitioner should be aware that function will be the final determinant in any judicial inquiry into the corporation. It seems that little purpose is served by setting forth in the limited time available all the possible forms of non-profit corporations but merely in way of summary to point out two important features of the modern non-profit and not-for-profit corporation:

1. A non-profit corporation is one that does not produce financial gain to any of its members, employees, or owners aside from compensation for actual services rendered to the corporation. But let it be emphasized that this does mean that a business must operate at a loss to qualify as non-profit. It may show a profit on a given transaction and it may show the same on all its transactions. There need not be an equating of gains and losses throughout the year on all business activities. Surpluses engendered by the business operations of the NPC may

be used to maintain or improve the business (*Burton Potter Post No. 185, American Legion v. Epstein*⁴).

2. Generally a NPC is one that is organized and operated for a commercial purpose other than furtherance of the profit motive alone. This must not be misconstrued to mean that directors and employees of non-profit corporations may not render a commercially valuable service to the organization and receive an appropriate compensation for their service. Additionally, the NPC may invest its funds in securities or businesses and make a profit therefrom (although Internal Revenue will require tax on this income in many instances). The crucial factor is not that a profit is made but rather the use to which it is put.

These points, coupled with the privacy resulting from tax exemptions and the freedom from making public disclosure inuring to many forms of the NPC, make it ideally suited as a form of "spin-off" corporation as an adjunct to the activities of regular business corporations. Additionally, they have presented the law with a plethora of difficulties as to when and when not to employ them. It is my hope that I can today, in the time allotted, achieve in the words of Bagehot the "bringing daylight in upon magic" and dispel a somewhat common misconception that there is something tainted, if not outrightly illegal, about the use of a NPC except for the traditional charitable functions. Since the term "charitable" is very elastic, it has lent itself to numerous abuses which have caused considerable Congressional concern from the tax viewpoint and state concern with fund-raising activities. The proposed tightening of the Revenue Laws and increased reporting requirements to which charitable foundations in particular are subject does not decrease the usefulness of the NPC and, more than anything, may make them more useful by removing the cloud of nonrespectability from them.

The actual form which the not-for-profit activity takes can be varied. We are concerned today, however, with the corporate form of organization; and it is, without doubt, the most commonly encountered one. This is due to the familiarity of the Bar with organizing corporate enterprises and is often selected for that reason alone, but also because it is the most convenient.

The non-profit corporation is a true corporation, whether business or charity directed. As such, its organization is very similar to those of the true business corporation. In this regard there is little advantage to the NPC as opposed to the profit-making corporation. Organizers or promoters have the initial duties as agents of the corporation to interest others in the purposes of the corporation and to begin the formalities of organization.

Apart from the organizational aspects of the NPC, the day-to-day functioning is also much the same as business corporations. Corporate

⁴ 219 N.Y.S. 2d 244 (Sup. Ct., Suffolk County, 1961).

actions must conform to those that are authorized under the Certificate of Incorporation and the by-laws; meetings of directors and members must be preceded by proper notice; minutes must be recorded and preserved.

One important difference between the NPC and the regular profit-making corporation is in the area of by-laws. In many jurisdictions the existence of by-laws for NPC's is optional, whereas they are mandatory for business corporations. In most instances by-laws are desirable because they help avoid internal problems resulting from uncertain procedure or inadequate understanding of powers, rights and duties of members and others associated with the corporation. On the other hand, where a high degree of individual control and freedom of activity are desirable, the option of not having a rigid set of by-laws may be a definite advantage. However, the caveat must be entered here that if the primary purpose of forming the NPC is a tax consideration (but this may well become a decreasing motive), the Internal Revenue Regulations⁵ require by-laws in order to obtain tax exempt status.

Tax Exemption

If I may be permitted to depart from my prepared outlined material, I should rather like to capitalize on the available time to emphasize the value the NPC has to existing businesses and minimize as much as possible the tax angle. This latter element will, notwithstanding the suggested revisions in the Code, continue to be of decreasing importance in the Non- and Not-For-Profit area—actually it is the existing flexibility that NPC's offer, rather than the form of tax exemption that offers the most advantage. Therefore, I will pass over the tax aspects of NPC's in rather a summary fashion. The basic consideration of the exemption status is from the angle of contributions rather than on the freedom from tax upon profits generated by the activities of the NPC. Traditionally, the NPC had to rely upon public contributions for much of its working capital. This feature, of course, played directly into the hands of those desirous of minimizing and avoiding as much tax as possible to create private foundations (about which more later). Although this consideration will continue to have some importance, changes in the tax laws can make this a somewhat less attractive feature. I wish to emphasize that it is *flexibility* which makes the NPC a convenient vehicle for business planning. If a tax saving is realized as a secondary feature, so much the better; but I have always felt that as a primary consideration it has been greatly overemphasized. However, it would be remiss not to mention in passing the basic requirements under the Code for tax-exempt status of the NPC. Under 501(c)(3)⁶ an organization to

⁵ 1.501(a)-1.

⁶ 26 U.S.C.A. 501(c)(3).

qualify for tax exemption must be "organized and operated exclusively" for one or more of the purposes enumerated, all of which require that the organization be "charitable," which is defined and used in the "generally accepted legal sense," meaning anything "that tends to promote the well-doing and well-being of social man."⁷ It is important to note here that usually unless an organization is classified under state law as charitable it will not be entitled to exemption, but state classification alone is not sufficient to insure federal exemption.

Broadly, organizations declared to be exempt are of two basic varieties:

1. Those which confer no benefits directly on the community but exist solely for the purpose of distributing funds to other tax-exempt organizations which do confer such direct benefits; and

2. Those which confer direct benefits by using their resources to aid needy segments of the population or the community at large.

What is important from the exemption standpoint under Federal law is that the organization be "organized and operated exclusively" for one or more of the purposes enumerated in 501 (c) (3).

Determination of Exclusive Organization and Operation

The basic organizational requirement is met if:

1. The articles of association (charter, trust instrument, etc.) limits the purposes of the organization to one or more of the exempt purposes of 501 (c) (3); and

2. The implementing documents must not expressly empower the organization to engage substantially in activities which are not in furtherance of one or more of the exempt purposes. Note on that the organizational test is only concerned with the content of the articles of organization and not with the nature of the activities carried on. This points out clearly that what may judicially be determined to be non-profit for other purposes is not controlling for determining tax-exempt status. If tax exemption is the primary concern of the organizers, it is important that none of the purposes fall without the scope of those enumerated in 501 (c) (3). However, an insubstantial amount of business activities will not result in the loss of exemption provided these are stated in the articles. It appears possible to frame the articles in such a way by incorporating the language of the regulations so as to permit the carrying on of insubstantial business activities while preserving the exemption. The important feature here is to word the articles in such a way that the business activity is indicated to be in direct furtherance of the exempt purpose of the organization thus seeming to permit the business activities to be substantial.

⁷ Ould v. Washington Hospital, 95 U.S. 303 (1877).

In addition to the organizational test for exemption, the "Operation" test must also be met. If the organization engages primarily in activities which accomplish the exempt purposes and no more than an "insubstantial portion" of its activities are devoted to other functions, the exemption is preserved. The term "exclusively" as used in the Regs. means "primarily" rather than "solely" which is different from its general meaning. But again, the key is to tie the business activities into the discharge of the purposes.

It is not my purpose here today to detail the exacting provisions of the Code and Regulations but rather to highlight those aspects which directly bear upon the conduct of business activities by Not-For-Profit Corporations. As already established, an exempt organization under the Regulations does not lose that status simply because it operates a trade or business so long as they are in furtherance of the exempt purposes. Apparently, so long as they are in "furtherance," their substantiality is not particularly important. What does count, however, is the destination of the income received from the business activity.

Unfortunately, although the Internal Revenue Regulations may be satisfied, the basic question of what, if any, business activity may be permitted the organization in the first instance under the applicable state law under which it is formed remains.

State Law as Bearing Upon Permissible Business Activities

Some states prohibit any business activity whatsoever, which does not *directly* promote the objects for which the corporation was organized. There is certainly a distinction between a requirement of "direct promotion" and "in furtherance of corporate purposes." The other extreme is that of the Model Non-Profit Corporations Act and the new New York NPCL, which defines as "not-for-profit" a corporation no part of the income of which is distributable to its members, directors or officers. This permits the realization of completely unrelated business profits; so long as the allocation test is met the non-profit status, and presumably the exempt status, is maintained.

The trend is definitely in the direction of permitting business activities to non-profit organizations, and certainly within the foreseeable future the "Distribution of Income and Profits" test will assume primacy.

Of course, the federal exemption is only one side of the picture and in many situations, a largely overemphasized one. It is still possible to receive exemption from numerous state and local taxes while losing an exemption from federal ones—the two exemptions are mutually exclusive, even though they frequently converge in practice. Note also that state exemption is only a point of beginning to determine exemption under federal law as pointed out earlier.

Traditionally, the exemption was important because private con-

tributions were the largest single source of revenue for non-profit charitable organizations. However, with the increasing use of the Not-For-Profit business corporation this source of funding is of secondary importance. This will also become true with the private foundation where the deductibility of the charitable contribution has already become a secondary consideration.

Tax considerations in all areas for too long have been allowed a value altogether disproportionate to their real effect. Whether this was the result of good "salesmanship" on the part of tax attorneys or accountants or the sense of awe inspired in many practitioners by the mystery of numbers is unimportant. The tax savings, at least from the exemption viewpoint, is overemphasized; the tax factors such as the deductibility of certain expenses has been minimized except perhaps by "Americans Building Constitutionally," which have capitalized upon other tax features in encouraging its "students" to create private foundations.

The private charitable, "so-called" foundation has been a recent development which will continue to have great importance in the developing jurisprudence of the not-for-profit area and must be considered as a permissible form for the NPC to take, at least in its incorporated form. It certainly should be considered by the business executive who is attempting to prevent further erosion of his capital by what he considers to be virtually confiscatory taxes. But as an instrument of business planning, the private or corporate foundation has a much more important role to play than merely preserving the capital accumulations of a private individual.

It is here that business and charity become mixed and the NPC achieves one of its two greatest uses. Besides serving as a mechanism for philanthropy and a tax-free reservoir for otherwise highly taxable income, a primary concern of the organizer of a foundation (corporate or private) is the immense power which the foundation gives to the controller of a business or industry to perpetuate his control, as noted by the author of a Note in 34 Va. L. Rev. 182, 188 (1948):

It is this peculiar circumstance—*retention of control*—which largely explains the emergence of family foundations as the dominant feature on the foundation scene today. Men who have built successful enterprises and seen the value of their equity swell, have sought, naturally, to keep control within the family. They have accordingly established charitable family foundations, minimized their tax, enjoyed the satisfaction of promoting good works, and retained practically all but the dividend benefits of ownership. Such persons, it has been said, actually do not give away their property at all, but only the income thereon—though this is perhaps an overstatement.

Certainly one of the most obvious business planning uses for the non-profit organization is the establishment of the corporate foundation to prevent divesting of assets which otherwise would go to the state as income tax, and at the same time sanctify the donor's name and give

public proof of the sense of social responsibility of the creator of the charitable institution.

There is little doubt that many businessmen regard the charitable organization as solely a means of preserving family wealth and control, and would welcome any liberalizations in the not-for-profit area. However, this use of the NPC, though retaining validity into the foreseeable future, is not the role that the NPC is ordained to discharge. The current Tax Revision Act of 1969 will probably see to this. The proposed revisions will not hinder the growth of the NPC. In the future I think we can look forward to seeing the usefulness of these corporations being directed toward increasing involvement in the public scene or, in other words, in the language of the student protester today, "making the corporation more relevant."

But in order for the modern corporation to become "more relevant" (and I am basing the following on the assumption that business should become so), it will be necessary to remove or circumvent various traditional legal principles which can have a restricting effect upon certain corporate ventures into the public sector, notably in the areas of housing, welfare, and job training and the assumption of more socially-involved projects. The idea of *ultra vires* is largely dead, and I think corporate management is daily growing more concerned with doing something for society rather than engaging solely in exploitative enterprises. Yet the rigidity of the common law's concern for committing the equity owner's contribution to enterprises other than those stated in certificates of incorporation remains.

But even if the business corporation has not changed its basic orientation, it has something of value to offer society besides aiding and abetting an undiminished appetite for consumption, and this is in the area of management skills and techniques. The problem to date has been how to bring about the merger of these skills with the public good and still conduct an enterprise within the existing legal framework. Lest the connection here seems tenuous, let me reiterate and clarify again the distinction between the non-profit and not-for-profit *business* corporation. The key, of course, lies in the addition of the word "business" after "not-for-profit" more than in the change from "non-profit" to "not-for-profit"—a change in terminology designed primarily to focus attention away from traditional categories and to ease the task of rethinking roles. It is also probably a response to the modern propensity to assume that a name change revolutionizes the entity. In this case it certainly does change the emphasis and focus and makes the transition easier. The modern practitioner must undertake a degree of rethinking in the non-profit area; no longer should the term conjure up only a mental picture of schools, hospitals, homes for the aged, fraternal organizations, churches, trade associations, agricultural organizations and cemetery plots. Today one is required to think in addition to these of

research and development companies, capital development corporations, residential and industrial, homeowner associations and so forth. Several of these, particularly the development corporations, are multi-million dollar entities, no longer dependent upon private giving for their existence, but containing the potential of making large profits while conducting a necessary public function. Some are mixtures of the private and public sector, where the management skills of the private are blended with the power of the public to renovate central city areas, stop environmental pollution and the like. Whatever their ultimate function, they are the vanguard of the future corporate entity if the students of the future are to be believed.

Let me illustrate by several quotes from the American Academy of Arts and Science's publication "*Toward the Year 2000.*"

While it (the modern corporation) has served the advanced Western countries, it may not be the major productive unit of the future. It does not seem to fit the need for effective innovative units in the underdeveloped world nor their political and cultural requirements. There will very likely be a whole series of experiments to devise a new innovative organizational productive unit short of government.

Harvey Perloff

We would want, also, to discuss the creation of new social forms—not-for-profit corporations, regional compacts, and the like—which could introduce a new flexibility into government.

Daniel Bell

How can you create self-destroying organizations—organizations that destroy themselves when their task is completed? One way to do this is to have an Executive that really takes on the form of the modern corporation. The various autonomous, semi-attached units could be spun off, destroyed, or sold when the need for them has disappeared.

Donald Schon

One can think conceptually of new social forms, like the not-for-profit corporation. . .

Since the trend is towards the creation of some major innovative item which will force the restructuring of the organization of society by changing many of its components, it increasingly appears that the not-for-profit corporations will be utilized with great frequency.

Steps in Organization of NPC

Regardless of the purpose for which the NPC is intended the steps in organization are virtually the same for all types. As indicated NPC's resemble from the formation standpoint regular business corporations, but there are significant differences. The first of these is the submission prior to filing to a judge of the first court of original jurisdiction

for his approval. This is often coupled, as it is in New York, with the further requirement that, if the purposes are "charitable" and public solicitation of funds will be utilized, the Attorney General's Office be given five days' notice of the time and place for submission of the proposed Articles of Incorporation, so they may intervene if they wish. The approval of the justice of the Supreme Court, as the procedure is called in New York, is generally a *pro forma* act. However, the approving justice is permitted by statute to make an independent inquiry about the organization and can deny or withhold approval if he feels that the proposed NPC duplicates existing corporations in the community or its purposes are against public policy. According to the New York Court of Appeals, the broad discretion conferred by statute is actually limited to the mere ministerial task of determining whether or not the form of the proposed articles are proper. The new NPCL is consistent with this, to the extent that this approval is dispensed with for the Type A NPC, which is defined as one formed for any lawful non-business purpose or purposes, including but not limited to any of the following nonpecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural and animal husbandry. **It is still required, however, for types B and C where the activities are such that it is felt that such supervision is required and these encompass the NP business corporation.** In addition to the consent and approval of a local justice, many statutes (and again New York is typical) require obtaining consent to file from various state agencies, whose jurisdiction extends over the type of activities proposed by the NPC, *i.e.*, Commissioner of Education.

It has been this speaker's experience that whereas the consent and approval of the local justice is more or less *pro forma*, the consent of the appropriate State Commissioner is less so, and not infrequently changes in corporate purposes, etc., have been required as a condition precedent to the formal consent.

A third level of initial supervision is exercised when the articles, with the required prior consents are submitted to the Secretary of State's Office for filing. Here other changes may be required before the articles are accepted for filing.

To these three levels of initial supervision, as I choose to term it, is added the continuing power of the state to exercise authority over the NPC, through the traditional reserved-powers principle, which manifests itself in statutory directives to the Attorney General and in the present statute a power of investigation is conferred upon the justice of the Supreme Court in the locality where the NPC is located to order an accounting and to generally supervise corporate affairs if demanded by a certain percent of the membership. This latter power is strictly construed by various Supreme Court judges, who often for polit-

ical reasons do not wish to become involved in the disputes of the NPC. This may be particularly noticeable when the NPC involved is once concerned with community action and equality.

The new NPCL also contains a broad statutory limitation on the activities of NPCs.⁸

Notwithstanding any other provision of this chapter or any other general law, a corporation of any type or kind to which this chapter applies shall conduct *no* activities for pecuniary profit or financial gain, whether or not in furtherance of its corporate purposes, except to the extent that such activity supports its other lawful activities then being conducted.

It is undoubtedly apparent at this juncture that it is *Function and Actual Operation* of the NPC which confers the Not-For-Profit or Non-Profit status. The question naturally arises as what, if any, are the variations in applying the "pecuniary profit" and "organized and operated exclusively" tests as between the Non-Profit and the Not-For-Profit business corporation. I believe that there is a discernible difference in the application of those two principles as between the two. As mentioned previously, the term "Non-Profit" in modern parlance is limited to the more traditional types of charitable organizations, which if they conduct any business activities they are so incidental as to be negligible, like the handcrafts made by patients and sold in the coffee shop or lobby of a hospital.

The "Not-For-Profit" business corporation is just that—its primary activity is commercial, in the sense that it is economically orientated. Because of the benefits conferred upon it by the law, it is, of course, placed at a competitive advantage over a pure business corporation or even over a pure non-profit company, which would no doubt be prohibited from carrying on the activity in the first instance.

The NPC is really the logical development or extension of current societal demands. It permits the modern corporation to engage in socially useful enterprises without the previously required sacrifice of foregoing an economic advantage. This, of course, decreases the burden upon government, which might or might not be in a position to adequately supply the need which the particular NPC desires to fill. Although not intended to supplant government, the NPC is a vehicle for "good works" constructed in such a fashion as to attract private capital by permitting some return thereon, rather than the traditional prohibition leveled against non-profit organizations forbidding the distribution of income or earnings to members. The NPC is still restricted but can now attract considerably more private capital to carry out its corporate purposes than would have ever before been possible where all the corporate donor could expect was a tax deduction, and

⁸ § 204.

then probably find that unavailable if the non-profit organization was carrying on an activity of the type conducted by the NPC.

Permit me to illustrate what I mean by those "activities." I cite from the Purposes section⁹ of the NPCL re: Local Development Corporations—Type C.

Corporations may be incorporated or reincorporated under this section as non-profit local development corporations operated for the exclusively charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals or improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest.

In carrying out these purposes the corporation is permitted considerable flexibility in financial matters and may issue notes and bonds and "other obligations" and dispose of its assets without leave of the court.

The NPC appears to be the answer to the problem of how to liberate private capital for devotion to charitable purposes rather than to channel such funds to the public coffers via taxation for later redistribution as public monies. The law now specifically permits contributions to the corporation to be repaid to the extent that any such contribution is not allowable as a deduction by the contributor on his federal tax return. This does, it seems, give a certain benefit to the corporate participant who previously may have been entitled to no tax relief or found itself under the purview of the "Feeder" rule of Internal Revenue.

Management and Control of the NPC

The use of non-profit organizations to carry out certain corporate activities has often been constrained by the rather hazy statutory provisions regarding control and management of the enterprise. Frequently, the statutes required no directors and even no members for that matter. Since the financial contribution of the participants was usually limited, the tight controls imposed upon management of business corporations was felt to be unnecessary. Consequently, the Not-For-Profit organization was difficult to take seriously. However, these omissions have, or are in the process of being, eliminated. Therefore, business is more likely to view the NPC as a useful instrument today. Heretofore, the involvement with non-profit activities by business was limited either to

⁹ § 1411(a).

contributions or the organization of the foundation, but little thought was given to utilization of this type of corporation to carry on business activities. It has today come of age, as it were, and the NPC provides the avenue through which business can fulfill its avowed commitment to be socially responsible and relevant to the Twentieth Century.

Summary.

My purpose here today has been, hopefully, to create an awareness on the part of the practicing lawyer that there exists a form of corporate enterprise which has uses which permit a business:

- A. To contribute capital and managerial skills to an enterprise making possible economies of scale and thereby permitting the accomplishment of activities, hitherto limited to government, while permitting some return on the investment, which makes the attraction of risk or venture capital easier.
- B. To actively promote the improvement of society by widening the scope of activities permitted to a non-profit organization.
- C. Finally, to provide a degree of insulation and easing of risk, which is at least equal to if not greater than that existing in stock corporations and where a tax savings is not the prime consideration the vehicle for a business corporation to "spin-off" (not in the tax sense) certain of its activities, particularly research and development or others that are best marginally profitable, and yet retain control. Apropos this I suspect that accountants can be quite creative in finding uses for the NPC which have hitherto been unsuspected that would substantially improve a corporate financial statement.