



ANNO QUINTO

ELIZABETHAE II REGINAE

A.D. 1956.

No. 56 of 1956.

An Act to make provision for the incorporation of associations, to repeal the Associations Incorporation Act, 1929-1935, and section 401 of The Companies Act, 1934-1952, and for other purposes.

[Assented to 29th November, 1956.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Preliminary.

1. This Act may be cited as the "Associations Incorporation Act, 1956". Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
3. (1) The Associations Incorporation Act, 1929-1935, is hereby repealed. Repealing and saving provision.
 (2) Section 401 of The Companies Act, 1934-1952, is hereby repealed.
- (3) Every association which at the commencement of this Act is incorporated or is deemed to be incorporated under the Associations Incorporation Act, 1929-1935, shall be deemed to be an association duly incorporated under this Act.
- (4) All steps and proceedings instituted before the commencement of this Act for the incorporation of an association pursuant to the provisions of the Associations Incorporation Act, 1929-1935, may be continued pursuant to the provisions of that

Act. A certificate of incorporation shall in a proper case be issued under this Act in respect of such an association, but after the issue of any such certificate the provisions of this Act shall apply to any such association.

Interpretation.
Cf. 1912, 1929,
s. 3.

4. In this Act, unless the context or subject matter otherwise requires—

“association” means—

- (a) any church, chapel or religious body ;
- (b) any school or hospital ;
- (c) any benevolent or charitable institution ;
- (d) any body or committee of persons formed for the purpose of administering (whether as trustees or otherwise) any scheme or fund for the payment of superannuation or retiring benefits to the members of any organization or the employees of any body corporate, firm or person ;
- (e) any association for the purpose of recreation or amusement, or for promoting or encouraging literature, science or arts, or for promoting or improving community centres ;
- (f) any association formed or to be formed for promoting any like object or any of the aforesaid objects or any other useful object,

but does not include any association for the purpose of trading or for the purpose of securing pecuniary profit to the members from the transactions thereof :

“incorporated” and “incorporated under this Act” means incorporated or deemed to be incorporated under this Act :

“local court” means a local court of full jurisdiction consisting solely of a Local Court Judge or a special magistrate :

“registrar” means the Registrar of Companies and includes the Deputy Registrar of Companies :

“rule” of an association includes regulation of the association.

s. 4. IN RE PROPRIETARY ARTICLES TRADE ASSOCIATION OF SOUTH AUSTRALIA INCORPORATED (1949) S.A.S.R. 88. Held that a trade protection association formed by manufacturers, wholesalers and retailers of a particular class of goods which maintained “list” prices among its members but which neither traded or made any profit, was entitled to be registered as an association.

Incorporation of Association.

5. (1) Any trustee of an association or any person who is authorized so to do by the committee or other persons having the management of the association, may give public notice in the prescribed form of his intention to incorporate the association.

Notice of
intention to
incorporate
association.
1912, 1929
s. 4.

(2) The said notice may be given by publishing the same once in a daily newspaper circulating in Adelaide, or by publishing the same once in a newspaper circulating in the neighbourhood of the place in which the association is situated or established. The notice shall contain the name and address of the person by whom it is given.

6. The persons having the management of or being interested in any association intended to be incorporated under this Act may do all such acts as may be necessary for incorporating the association under this Act.

Power to
take steps for
incorporation.
Cf. 1912, 1929
s. 19.

7. (1) At any time within one month after the publication of the notice given pursuant to section 5 or if notice is given more than once, after the expiration of the last notice so given, any person may by notice in writing given to the registrar object to the incorporation of the association upon any of the following grounds, namely:—

Objection to
incorporation.
Cf. 1912, 1929
s. 5.

I. That the person giving notice of the intention to incorporate the association is not duly authorized to make application for such incorporation:

II. That the association is not an association within the meaning of this Act:

III. That the association is formed or is about to be formed for an illegal purpose or a purpose contrary to public policy:

IV. That the name of the association is similar to that of any other incorporated body or a name registered under the Registration of Business Names Act, 1928-1955, or is so similar thereto as to be likely to be mistaken for it.

(2) Every objection shall set out fully the grounds of the objection and the name and address of the person by whom the objection is made.

(3) Upon receipt of any objection, the registrar shall give notice thereof in writing to the person by whom the notice of the intention to incorporate the association was given and shall in the said notice state that the said person may within such time as is fixed in the notice make representations therein to the registrar. The registrar shall consider the objection and any representations made as aforesaid and shall come to a decision as to whether or not a certificate of incorporation should be issued in respect of the association. The registrar shall give notice in writing of his decision to every person by whom objection is made as aforesaid and to the person by whom the application for incorporation was made.

Appeal from
decision of
registrar.

8. (1) Any person to whom notice is given of the decision of the registrar pursuant to subsection (3) of section 7 may, within fourteen days after notice is given as aforesaid or within such extended time as the court for good cause may allow, appeal from the decision to the local court nearest the place where the association is situated or established. Notice of any such appeal shall be given to the registrar.

(2) The local court shall hear and inquire into the appeal and shall by its order determine whether or not a certificate of incorporation shall be issued.

Application
for incorpora-
tion.
Cf. 1912, 1929,
s. 6.

9. (1) After the expiration of one month but no later than seven months after the publication of the notice given pursuant to section 5, or if notice is given more than once, after the publication of the last notice so given, the person giving notice as aforesaid, may make application for the incorporation of the association.

If pursuant to section 7 objection is made to the incorporation of the association and the registrar has decided that a certificate of incorporation should be issued, the application for the incorporation of the association shall not be made until after the expiration of one month after notice is given by the registrar pursuant to subsection (3) of section 7. If pursuant to section 8 any person appeals to the local court against the decision of the registrar, the application for incorporation of the association shall not be made until the appeal is finally determined.

(2) Every such application shall state—

- (a) the name of the association ;
- (b) all the objects and purposes of the association ;
- (c) where the association is situated or established ;
- (d) the name and address of the public officer of the association ;

(e) in whom the management of the association is vested, and by what means, whether by deed of settlement or otherwise.

(3) Every such application shall be accompanied by a declaration made by the applicant—

(a) that he is a trustee of the association or, as the case may require, that he is authorized by the committee or other persons having the management of the association to make the application ;

(b) that the notice required by section 5 to be given was duly given ;

(c) that the particulars contained in the application are true.

(4) Every application shall be accompanied by a copy of the rules of the association and any trusts relating thereto and if any such rules or trusts are embodied in a deed, a copy of the deed. All such rules and trusts shall be verified by a declaration made by the applicant.

(5) The prescribed fee shall be payable with every such application.

10. (1) The registrar may refuse to issue a certificate of incorporation of any association under any name—

Power of registrar.

(a) which is the same as the name of any other incorporated body or as any name registered under the Registration of Business Names Act, 1928-1955, or is so similar thereto as to be likely to be mistaken for it ;

(b) which includes any of the words "limited", "no-liability", "proprietary", "corporation", "co-operative" or any contraction thereof ;

(c) the use of which is prohibited by any Act or law ; or

(d) which is not in the English language.

(2) Except with the consent of the Governor signified by a notice in the *Gazette*, no association shall be registered by a name which includes any of the following words, namely "Royal", "King", "Queen", "Imperial", "Crown", "Empire", "Commonwealth", "State", or any other word which in the opinion of the registrar suggests or is calculated to suggest the patronage of Her Majesty or any member of the Royal Family or the support or patronage of the Government of the Commonwealth or a State.

Now
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Issue of
certificate of
incorporation.
1912, 1929,
s. 7.

11. (1) On the registration of the application and declaration the registrar shall issue a certificate of incorporation of the association and shall, by notice published in the *Gazette*, give notice of the incorporation of the association.

(2) Upon payment of the prescribed fee the registrar shall issue a certified copy of any such certificate of incorporation.

Effect of
registration.
Cf. 1912, 1929,
s. 8 (part).

12. (1) The registration of an association shall render it and the members thereof for the time being a body corporate by the name described in its certificate of incorporation, with the word "Incorporated" as the last word in its name.

(2) The association so incorporated shall have perpetual succession and shall have a common seal and shall be capable of exercising all the functions of an incorporated body.

(3) The association so incorporated may, in its corporate name, sue and be sued.

Provision as to Property.

Power of
association to
hold property,
etc.
Cf. 1912,
1929, s. 8
(part).

13. (1) An incorporated association may (if its rules do not direct otherwise) in its corporate name hold, purchase, or take on lease in its corporate name, any land, and may sell, exchange, mortgage, lease or build upon the same (with power to alter and pull down buildings and again rebuild), and otherwise deal with the same as fully and effectually as a natural person could do.

(2) The receipt of the association shall be a discharge for all moneys arising from or in connection with any such sale, exchange, mortgage or lease.

Vesting of
property in
corporation.
1912, 1929
s. 9.

14. (1) After the issue of the certificate of incorporation all personal property held by any person in trust for or on behalf of the association shall vest in the corporation.

(2) The public officer of the association may at any time after the issue of the said certificate, deposit in the General Registry Office on payment of the prescribed fee, a memorial in writing setting forth any land or interest in land (not being land under The Real Property Act, 1886-1945) held by any person in trust for or on behalf of the association, and the Registrar-General shall, subject to subsection (4) hereof, register the said memorial, whereupon the said land or interest in land shall be deemed to be vested in the corporation.

(3) The public officer of the association may at any time after the issue of the said certificate, file in the Lands Titles

Office on payment of the prescribed fee notice in writing setting forth any land or interest in land (being land under The Real Property Act, 1886-1945) held by any person in trust for or on behalf of the association, and the Registrar-General shall, subject to subsection (4) hereof, thereupon enter upon the certificate of title a memorial that the land or interest in land is vested in the corporation, whereupon the said land or interest in land shall be deemed to be vested in the corporation.

(4) Every such memorial or notice shall be accompanied by the certificate of incorporation, or a copy thereof certified by the registrar, and by a declaration made by the public officer and by at least one of the persons in whom the land or interest in land is vested declaring that the land or interest in land is held in trust for or on behalf of the association.

Public Officer.

15. (1) Every incorporated association shall have a public officer.

Public officer
Cf. 1912,
1929, s. 10.

(2) Every association incorporated prior to the commencement of this Act shall within one month after the commencement of this Act appoint a public officer and shall within fourteen days after making such appointment file in the office of the registrar a notice of the appointment. Until such time as the public officer is appointed as aforesaid, the person first named in the last list of seal-holders of the association filed in the office of the registrar and who would by virtue of subsection (5) hereof be capable of being appointed as the public officer, shall be deemed to be the public officer of the association. As soon as may be after the commencement of this Act, the registrar shall give notice to every such association stating that it is necessary for the association to appoint a public officer as required by this subsection and stating the sealholder who by virtue of this subsection is deemed to be the public officer.

(3) If any person holding the office of public officer of any association ceases for any reason to be the public officer of the association the association shall, within fourteen days thereafter, appoint a new public officer.

(4) Within fourteen days after the appointment of a new public officer or after a change in the address of the public officer, the newly appointed public officer or the public officer whose address has changed, as the case may be, shall file in the office of the registrar a notice setting forth the particulars of the change.

(5) A person who is not a natural person or who is not a resident of South Australia shall not be capable of being the

public officer of an association and if any person who has been validly appointed or elected as a public officer ceases to be a resident of South Australia, or becomes bankrupt, or is sentenced to a term of imprisonment for the commission of a felony or misdemeanour, he shall thereupon cease to be the public officer.

(6) The public officer of an association may (except where the rules of the association otherwise provide) hold any other office in the association except that of auditor.

(7) Notwithstanding that the rules of the association do not make any provision for the appointment of a public officer, every incorporated association shall have power from time to time to appoint a public officer and to remove any person so appointed from his office as public officer.

Change of Rules.

Deposit of
rules.
Cf. 1912,
1929, s. 11.

16. (1) Every incorporated association shall, within one month after the making of any addition or alteration to any of the rules of the association or any trusts relating thereto file in the said office a copy of every such addition or alteration.

(2) All such additions or alterations shall be verified by the declaration of the public officer or by the secretary or a member of the committee of management of the association.

Name and Objects.

Use of name.

17. (1) Every incorporated association shall have its name in legible characters on its seal, but it shall be sufficient if the abbreviation "inc." is used in place of the word "incorporated".

(2) Where the name of an incorporated association is included in any document it shall be sufficient if the abbreviation "inc." is used in place of the word "incorporated".

Change or
alteration of
name.
Cf. 1912,
1929, s. 12.

18. (1) Any incorporated association may by resolution passed in accordance with its rules, and with the approval of the registrar, change or alter its name.

(2) Within one month after the passing of any such resolution the association shall give notice in writing to the registrar of the resolution verified by a declaration of the public officer or by the secretary or a member of the committee of management of the association that the change or alteration was validly made in accordance with its rules.

(3) The registrar, unless satisfied that the new or altered name would, if the association were applying for incorporation under this Act, be a ground under section 10 for refusing to register the association, shall approve the new or altered name and shall issue a certificate of incorporation altered to meet the circumstances of the case. The name of the association shall be deemed to be changed or altered, as the case may be, from the time of the issue of the certificate.

(4) No change or alteration of name shall affect any rights or obligations of the association or render defective any legal proceedings instituted or to be instituted by or against the association ; and any legal proceedings may be continued or commenced against the association by its former name.

19. No alteration or addition to the objects or purposes of an incorporated association shall be valid unless the alteration or addition has been registered by the registrar. The registrar, if satisfied that any such alteration or addition is contrary to the provisions of this or any other Act, may refuse to register it.

Change of
objects.

Contracts.

20. (1) Contracts on behalf of an incorporated association may be made as follows :—

Contracts.
Cf. 2196,
1934, s. 44.

- I. A contract which if made between private persons would be by law required to be in writing under seal may be made on behalf of the association in writing under the common seal of the association :
- II. A contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the association in writing signed by any person acting under its authority, express or implied :
- III. A contract which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the association by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the association and its successors and all other parties thereto.

(3) A contract made on behalf of an incorporated association may be varied or discharged in the same manner in which it is authorized by this section to be made.

General Powers.

General powers
of association.

21. (1) Subject to the provisions of this Act and to any special restrictions or prohibitions in its rules or trust deed, and without prejudice to any other powers contained in its rules or trust deed or implied by law, every incorporated association shall have power—

- (a) to act as trustee for any other incorporated association or any body, corporate or unincorporate, formed for charitable purposes ;
- (b) to accept and hold upon trust any real or personal property which is given to the association subject to any trust and to carry out any such trust :
- (c) to invest its moneys in or upon any security in which trustees are for the time being authorized to invest trust funds ;
- (d) to open and operate on bank accounts ; and
- (e) to borrow money upon such terms and in such manner and upon such security (if any) as the association shall think fit, for the purpose of carrying out its objects and purposes.

(2) Nothing in this section shall be deemed to empower any incorporated association to carry on trading or secure pecuniary profit, whether directly or indirectly, to its members.

Transfer of Property.

Transfer of
property.

22. (1) An incorporated association may, by resolution passed in accordance with its rules, determine to transfer all its property both real and personal to any other body, whether corporate or unincorporate, formed for promoting objects similar to its own or charitable objects or to any other incorporated association. 5/6 18/63

(2) Within fourteen days of the passing of such a resolution the association shall file a copy thereof with the registrar and shall give notice in one daily newspaper published in Adelaide and the *Gazette* of the intention of the association so to transfer all its property.

(3) Any member of the association, not being a member who voted in favour of the resolution, or any creditor of the association may within one month of such publication apply to the local court nearest the place where the association is situated or established for an order prohibiting the association from so transferring its property, and the court shall have full power and authority to determine the matters in question, but the only ground on which a creditor may apply for an order shall be that his debt has not been paid.

(4) An association shall not transfer its property until the expiration of one month after the publication of the last notice which it has given, nor, where an application to the local court has been made, until the court so orders, and ~~any transfer in contravention of this subsection shall be void.~~ *but Chandra Moha Kanyara Utk*

(5) When an association has completed the transfer of all its property the public officer thereof shall immediately file notice thereof with the registrar and on the expiration of three months after the filing of such notice the association shall be deemed to be dissolved.

(6) Nothing contained in this section shall be deemed to prevent an association making gifts which do not constitute the whole or the greater part of the property of the association.

23. (1) In any case where any property is held by an incorporated association upon trusts then, notwithstanding that the deed or other instrument creating the trust or the rules of the association do not contain any power to dispose of the property, or forbid any such transaction, any person who is authorized so to do by the committee or other persons having the management of the association, may make application to the local court nearest the place where the association is situated or established for an order authorizing the disposal of the whole or any portion of any such property in any case where the trusts upon which it is held have come either wholly or partially to an end.

Disposal of property.
Cf. 1912,
1929, s. 21.

(2) Upon such application the court may in any case in which it considers it proper so to do, make an order authorizing the disposal of the said property and directing the manner in which the proceeds arising from the disposal of the said property shall be disposed of.

(3) Upon the making and in pursuance of any such order it shall be lawful for the association to dispose of the property freed from all such trusts.

Winding up and Cancellation of Registration.

24. An incorporated association which is unable to pay its debts within the meaning of Part XI of the Companies Act, 1934-1952, may be wound up under the provisions of the said Part XI on the application of a creditor of the association. For the purposes of the said Part XI the association shall be deemed to be an unregistered company and the provisions of the said Part shall apply to and in respect of any such application by a creditor of the association.

Winding up of association.
Cf. 1912,
1929, s. 20.

New Sec 24

18/63

Cancellation of registration by registrar.
Cf. 1912, 1929, ss. 14, 15.

25. (1) In any case where the registrar has reasonable cause to believe that an incorporated association has ceased to exist or that the transactions of an incorporated association are such that it is not or has ceased to be an association within the meaning of section 4, the registrar may send by post to the person appearing to be the public officer of the association by any notice filed in the office of the registrar a registered letter requiring him within one month from the date thereof to satisfy the registrar that the association has not ceased to exist or, as the case may be, that the transactions of the association are not such as is beforementioned, and stating that, unless cause is shown to the contrary, a notice will be published in the *Gazette* with a view to the cancellation of the incorporation of the association.

(2) If cause is not shown to the contrary within the said time, the registrar may publish in the *Gazette* and send by post to the said public officer a notice that at the expiration of three months from the date of the publication of the notice the incorporation of the association will, unless cause is shown to the contrary, be cancelled.

(3) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the public officer or by any other person interested in the association, cancel the incorporation of the association and shall publish notice thereof in the *Gazette*.

Appeal from cancellation of registration.
Cf. 1912, 1929, s. 16.

26. The public officer of any association or any creditor or person interested in any association of which the incorporation is cancelled pursuant to section 25 may, within three months of the cancellation, apply to the local court nearest the place where the association was situated or established and the court, if satisfied that the association has not ceased to exist, or, as the case may be, that the transactions of the association are such that it is an association within the meaning of section 4, and that it is just so to do, may order that the incorporation be restored, and thereupon the incorporation shall be deemed to have continued as if it had never been cancelled.

Liability of association.
1912, 1929, s. 17.

27. (1) Notwithstanding that the incorporation of an association has been cancelled pursuant to the provisions of section 25 the association shall be liable to be sued and proceeded against as a corporation, and all dealings and transactions between the association and any person shall be valid against the association and all persons claiming under the association.

(2) The registrar shall forthwith after the cancellation of the incorporation of any association give notice thereof to the Registrar-General. Thereafter the Registrar-General shall not

register any dealings in respect of any land or interest in land vested in the association, unless satisfied by such evidence as he thinks fit that the persons claiming to execute any document on behalf of the association are authorized by the association so to do.

Amalgamation.

28. (1) Any two or more incorporated associations may by resolution of all of the associations passed in accordance with the rules of each association respectively, become amalgamated together as one association without any division of the property of the associations.

Amalgamation
of incorporated
associations.

(2) The public officer of each of the associations shall file with the registrar notice of the passing of the resolution by the association and of the name of the association to be created by the amalgamation.

(3) The registrar, if satisfied that the name of the association to be created by the amalgamation would be in accord with the provisions of section 10, may issue a certificate of incorporation of the association and shall, by notice published in the *Gazette*, give notice of the incorporation of the association.

(4) Upon the issue of the certificate of incorporation all property of the amalgamated associations shall vest in the association created by the amalgamation. Section 14 shall, *mutatis mutandis*, apply with respect to all such property.

(5) No amalgamation of associations shall prejudice any right of any creditor of or other person having any legal claim against any of the amalgamated associations and any such rights be enforced against the association created by the amalgamation.

Liability of Members.

29. No member of any association incorporated or deemed to be incorporated under this Act shall as such member be under any personal liability to any creditor of the association except as expressly provided in the rules or trust deed of the association.

Liability of
members.
2106, 1934,
s. 401.

Miscellaneous.

30. (1) Any notice which under this Act is required to be given to any incorporated association may be given by serving the notice upon the public officer of the association or the secretary or any member of the committee of management

Service of
notices, etc.,
on association.
Cf. 1912,
1929, s. 22.

thereof. Any such notice may be served by delivering it to the person upon whom it is served or by leaving it at his usual place of abode, or may be sent by post.

(2) In any case where it is necessary for any person to serve any other notice, demand, summons, writ or other process upon any incorporated association service thereof upon the public officer of the association shall be good and sufficient service on the association.

Service by
association.
Cf. 1912,
1929, s. 23.

31. In all cases where it may be necessary for an incorporated association to serve or give any summons, demand or notice of any kind to any person, the summons, demand or notice may be given in writing signed by the public officer of the association or by the solicitor for the time being of the association, without being required to be under the common seal of the association.

Provision as
to local court.

32. (1) For the purpose of any proceedings before a local court under this Act, the local court may do all such things relating thereto and in the same manner and to the same extent as it is empowered to do in the exercise of its ordinary jurisdiction.

(2) Upon the conclusion of any proceedings under this Act before a local court, the clerk of the local court shall transmit a copy of the order to the registrar.

Inspection of
documents.

33. Any person may inspect the documents kept by the registrar relating to associations on payment of such fees as may be prescribed ; and any person may require a certificate of the incorporation of any association or other certificate issued under this Act or a copy or extract of any other document or any part of any other document to be certified by the registrar on payment for the certificate, certified copy, or extract of such fees as may be prescribed.

Evidentiary
provision.
Cf. 1912,
1929, s. 24.

34. In all legal proceedings and in all transactions whatsoever—

(a) the fact that in any notice filed in the office of the registrar any person was therein named as the public officer of an incorporated association and that no subsequent notice has been filed giving notice of the revocation of the said appointment shall, in the absence of proof to the contrary, be sufficient evidence that the said person is the public officer of the association ;

- (b) a certificate in writing of the registrar that by notice filed in his office any person was therein named as the public officer of an incorporated association and that no subsequent notice has been filed giving notice of the revocation of the said appointment shall be conclusive evidence of the facts therein stated ;
- (c) a certificate in writing of the registrar that any association is or is not incorporated or deemed to be incorporated under this Act shall be conclusive evidence of the facts therein stated ;
- (d) a copy of any rules or trusts of any incorporated association, certified by the registrar to be a true copy thereof, shall be *prima facie* evidence that the said rules or trusts were rules or trusts, as the case may be, of the association therein mentioned and were in force at the date mentioned in the certificate of the registrar ;
- (e) every document purporting to be signed by the registrar shall, in the absence of evidence to the contrary, be received without proof of the signature.

35. Any incorporated association or public officer thereof which or who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds.

Penalties.
Cf. 1912, 1929,
s. 18.

36. The Governor may make regulations for or with respect to—

Regulations.
1912, 1929,
s. 25.

- (a) the inspection of documents kept by the registrar under this Act ;
- (b) the forms to be used under this Act for any application, notice or declaration or other matter ;
- (c) the fees to be paid for matters to be transacted or for the inspection of documents, or for certified copies of an extract from documents, or for certificates, under this Act ;
- (d) generally, all matters or things necessary or convenient to be prescribed for carrying this Act into effect.

Rules of
court.

37. The powers conferred by section 28 of the Local Courts Act, 1926-1947, shall include power to frame rules for regulating proceedings before local courts under this Act and generally for carrying this Act into effect.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

R. A. GEORGE, Governor.