



HSV Incorporation

Description

By Gene Garner, May 1, 2020

There has been a continuing discussion in our Village, asking if HSV is a community or a corporation and I'd like to examine that question. Note: All the following factual statements, either highlighted or in quote marks, are in the public domain and accessible by the general public.

I first noticed an incorporation disconnect when the **CEO** filed the **Petition to Amend and Restate Articles of Incorporation** on February 13, 2018, in the Garland County Circuit Court.

This subject came up again in November 2018 when CCI filed their "records" lawsuit (**26CV-18-1609**) against the POA. The **Rose Law Firm attorney** noted the following: "The Association contends venue is not proper in Garland County because its physical office is located in Saline County."

Also, "Moreover, the Association has alleged in a case before this Court that its principal place of business is in Garland County. It is judicially estopped from taking an inconsistent position in this case." (estopped = prohibited)

Also, "**Facts** The association's Articles of Incorporation are filed in Garland County."

The POA had stated their principal place of business was in Garland County when they amended and restated their Articles of Incorporation in February 2018, but then in November 2018, they stated their principal place of business is in Saline County when CCI asked to see the books and records.

I looked up the **Arkansas Nonprofit Corporation Act of 1963** and found **ACA 4-28-206 Articles of incorporation generally**. In **Section (a)** it states; "Any association of persons...desirous of becoming incorporated under the Arkansas Nonprofit Corporation Act...shall file with the circuit court of the county in which the main office or principal place of business of the proposed corporation is located signed and verified articles of incorporation..."

So, what can we learn from the above? It appears the HSV Articles of Incorporation don't comply with AR statutes. For our edification there are numerous AR Supreme Court decisions that address this

situation, one of the earliest is **Gazette Publishing Co v. Brady** that stated:

“In other words, we are of the opinion that the failure to file the articles of incorporation in either the office of the Secretary of State or in the office of the county clerk has the effect of constituting the proposed corporation a de facto corporation.” (de facto “A state of affairs which exists actually but which is illegal or illegitimate.” Black’s Law Dictionary).

The above tells us the HSV Articles are filed in Garland County only and the POA is doing business as a partnership without the protection of a corporate identity.

This sounds a lot worse than it is. The situation can be corrected by a vote of the BOD to amend the Articles of Incorporation in the Saline County Circuit Court. If the BOD decides to take that action any contracts, agreements, or other decisions by the previous BOD (February 2018 until now) become the individual liability of the directors that made those decisions.

The CEO’s contract was signed March 19, 2019 by Tom Weiss and Lesley Nalley.

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