

# Book Review of Personal Liabilities of Corporate Officers and Directors

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## PERSONAL LIABILITIES OF CORPORATE OFFICERS AND DIRECTORS

By MORTIMER FEUER. Prentice-Hall, Inc., Englewood Cliffs, N. J.: 1961, xiv, 226 pp. \$12.50

It is important that directors and officers of corporations realize the obligations of their offices when they assume them. Any concept that such offices are only honorary and solely for the embellishment of the corporate name is both erroneous and hazardous. This was recognized judicially with regard to directors in *Barnes v. Eastern and Western Lumber Company*; the court stated that "election to the board of directors" does "not constitute merely the bestowal of an honor" but entails "important duties and responsibilities."<sup>1</sup> The same statement would also apply to officers who might not happen to be directors. Directors and officers "should know of and give general direction to the general affairs of the institution and its business policy, and have a general knowledge of the manner in which the business is conducted, the character of the investments and the employment of the resources."<sup>2</sup> Even the voicing of dissent is not sufficient to satisfy this responsibility; they must advise other directors and officers of the facts, and take affirmative action to preclude wrongful conduct.<sup>3</sup> The preceding statements indicate only a few of the more widely realized duties of corporate officials but there are a great many more, many of which arise in dealings seemingly separable from any corporate relevance. These latter situations are a source of latent danger even to the most honest of executives. Yet, such problems crop up repeatedly even in the usual and repetitive affairs of day to day business life. Generally, it may be stated that the corporate officer and director must be obedient, loyal, and diligent toward the corporation but this only begs the question of what obedience, loyalty and diligence are and what they require.

An acute awareness of these omnipresent duties and the ever increasing number of persons serving as corporate executives has prompted Mortimer Feuer, a practicing New York

<sup>1</sup> 205 Ore. 553, 572, 287 P.2d 929, 938 (1955).

<sup>2</sup> *Kavanaugh v. Commonwealth Trust Company*, 223 N.Y. 103, 106, 119 N.E. 237, 238 (1918).

<sup>3</sup> BALLANTINE, CORPORATIONS § 78, at 202 (1946).

attorney and recognized authority in this field, to prepare *Personal Liabilities of Corporate Officers and Directors*. The possible utility of the book and something of its scope, as well as an indication of the many possibilities for a breach of duty by a corporate executive, can be well illustrated by the following sampling of chapter headings: "Activities Beyond Corporate Powers," "Conflict Producing Transactions In General," "Secret Profits," "Competition By a Fiduciary," "Advice of Specialists As Affecting Liability," "Responsibility For Dividend Payments," "Loans To Directors, Officers and Stockholders" and "Liability For Corporate Torts." This sampling of the twenty-one chapters, contained in 226 pages, also indicates the definitive organization and succinctness of the book.

The author intends the book principally as a type of guide-book in which the roads and hazards of the law are clearly marked and by which corporate officers and directors might guide their progress and activities. And, as Mr. Feuer clearly warns, the hazards are only pointed out and should indicate the necessity for legal counsel. If this warning is assiduously heeded, the book can be of considerable value to corporate officials since it is written in an admirably simple and informative style. However, a wholehearted endorsement of the book to this group must be denied on the basis of a subjective fear that laymen will generalize, project, rationalize and misinterpret statements intended only as guideposts. (This fear is shared by those, with whom this reviewer joins, who deprecate the teaching of business law as a distinct course.) A presentation of such information for corporate executives may be necessary but if so it is believed that it should be presented in such a manner as not to lend itself to a misconceived interpretation as authoritative legal advice, for example, discussions of cases, case documentation and reference to conflicts of authority and dubieties should be omitted, whereas they are notably present in this book.

Corporate executives, however, are not the only purported targets of this book, for corporate counsel are also included in the avowed intent of the author. But again endorsement must be withheld because corporate counsel will undoubtedly find Mr. Feuer's work far too basic and general to be of any substantial value. This is due not to any inadequacies on the part of the author but to defects indigenous to the attempt to write for both a lay and a professional audience. The difficulty is

compounded by the attempt to write a general guide book, applicable to all jurisdictions, in a field substantially controlled by state legislation.

So far the value of Mr. Feuer's work has been questioned because of a fear of misuse by corporate officials and because it is deemed too basic for corporate legal counsel. This, however, does not dictate a wholly unfavorable review; there is another audience to be considered—the general practitioner. These attorneys, many of whom may only infrequently confront these problems, have a definite need for this type of writing. The style of *Personal Liabilities of Corporate Officers and Directors* takes on some of the character of the publications of the Practising Law Institute (under whose auspices Mr. Feuer lectured on the problems of corporate management). It lacks the expositive rationale and concomitant length that characterizes what are generally referred to as texts or treatises. It also lacks the authority and breadth of most good hornbooks. But this in itself imparts value, for the author has written in a smooth relaxed narrative style which makes the book commendable for purposes of continuing legal education, and yet the decisive arrangement and adequate index make it also suitable as a first step reference work. Beyond this, the ample case documentation (there is no *undue* emphasis on any one jurisdiction) may provide an occasional suggestive lead to further research.

In an attempt to accomplish two incompatible purposes—legal enlightenment for both corporate officials and corporate counsel—the author has, to a large degree, failed in both, but this is only a failure of purpose and not of result. Mortimer Feuer has made a worthwhile contribution to legal literature. In compiling and organizing a clearly written discussion of the legal problems relating to the personal liability of corporate officials (an area of the law not yet overexposed to printers' ink) he has filled a need in a manner well suited to the use of the general practitioner.

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