

1970 Bill Pr. 3

Third Session, 16th Legislature. 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr. 3

An Act respecting the Calgary Beautification Foundation

MR. DICKIE

First Reading

Second Reading

Third Reading

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An Act respecting the Calgary Beautification
Foundation

(Assented to _____, 1970)

Preamble

WHEREAS certain citizens of the City of Calgary have by their petition prayed for the passing of an Act incorporating the Calgary Beautification Foundation, and that the said Foundation be empowered to receive and administer donations in trust for the purposes hereinafter described; and

WHEREAS it is expedient to grant the prayer of the said petition;

THEREFORE Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title

1. This Act may be cited as *The Calgary Beautification Foundation Act*.

Interpreta-
tion

2. In this Act,

- (a) "Foundation" means the Calgary Beautification Foundation incorporated by this Act;
- (b) "Calgary district" means the City of Calgary and such part of the surrounding areas as, in the opinion of the Board, are readily accessible thereto;
- (c) "Board" means the Board of Directors as constituted pursuant to this Act;
- (d) "Nominators" means the Committee of Nominators constituted pursuant to this Act.

Constitu-
tion of
Foundation

3. The Honourable C. Campbell McLaurin, Barrister and Solicitor, Frederick Peacock, Executive, Edwin Raines, Architect, Mervyn G. Graves, Chartered Accountant, Daniel T. McDonald, Executive, Orrin H. E. Might, Q.C., Barrister and Solicitor, and Horace W. Meech, Executive, all of the City of Calgary, in the Province of Alberta, and

such other persons as are from time to time appointed members of the Board are hereby constituted and established a body corporate and politic, under the name of the "Calgary Beautification Foundation", and by that name shall have perpetual succession and a common seal with power to change, alter, break and renew the same when and so often as it shall think proper, for and with the following objects, powers and purposes, namely:

- (a) to accept gifts, grants, legacies, devises or bequests, in trust, of real or personal property of every nature and wheresoever situate, for the objects of the Foundation, and according to the terms and conditions set forth in this Act;
- (b) to acquire by purchase, gift, transfer or otherwise real or personal property of every nature and wheresoever situate, and have, hold, possess, enjoy, take and receive the same for the general uses and purposes of the Foundation;
- (c) to contract and be contracted with, sue and be sued, implead and be impleaded with, answer and defend in all courts and places whatsoever;
- (d) to, from time to time, give, sell, exchange, convey, transfer, assign, mortgage, encumber, demise or otherwise dispose of all or any of the property, real or personal of the Foundation, or any interest therein, and of all or any property held in trust, subject only to the provisions of this Act;
- (e) to borrow, raise or secure the payment of, money for any of the purposes of the Foundation in such manner as it deems expedient, and, in particular, by negotiable instruments and by the issue of debentures, bonds, mortgages or obligations, charged upon all or any of the property of the corporation, and may purchase, redeem or pay off any such securities in whole or in part;
- (f) to invest all moneys of, or in possession of, the Foundation arising from or connected with its objects or operations, or any of them in such securities, real or personal, as by law or statute in force in the Dominion of Canada, trustees may lawfully make investments;
- (g) to pass on and entrust to one or more trust companies, banks or other fiscal institutions the custody and management of all or any portion of the property at any time or from time to time received or held by the Foundation, in such manner and in such proportions as the Board may deem proper, and enter into agreements with such trust companies, banks or other fiscal institutions in regard thereto;

- (h) to lease any lands at any time held by the Foundation; and
- (i) to have all the other powers and privileges and immunities vested by law in a corporation, necessary or proper for the carrying out of its objects.

Application
of The
Companies
Act

4. The Foundation is exempt from each of sections 7, 81, 82, 87, 120, 130 and 266 of *The Companies Act* and amendments thereto or substitutions therefor.

Objects

5. The objects of the Foundation are to use the funds entrusted to it for such purposes as will in the sole discretion of the Board most effectively:

- (a) assist, encourage and promote the beautification of the Calgary district;
- (b) promote and develop any project or scheme, regardless of size, relating to the improvement or conservation of aesthetic values and physical appearance of the Calgary district;
- (c) reduce and prevent pollution of the air and water and destruction of and injury to the land in and about the Calgary district;
- (d) acquaint and activate individuals, public and private agencies, public and private institutions and organizations with respect to preservation, development and rehabilitation of beautification in the Calgary district.

Committee
of Nomin-
ators

6. (1) Subject to the provisions of section 7 hereof, the Board of the Foundation shall be nominated and appointed, in conformance with the provisions of this Act, by a Committee of Nominators, which shall be the persons from time to time holding the following offices:

- (a) the President of the Calgary Chamber of Commerce;
- (b) the President of the Labour Council of Calgary;
- (c) the senior trial judge, resident in Calgary, of the Supreme Court of Alberta;
- (d) the President of the then existing Board of Directors of the Foundation;
- (e) the Vice-president of the then existing Board of Directors of the Foundation.

(2) In the event that any office holder as designated above refuses or is unable to carry out his duties as a member of the Committee of Nominators, or in the event that any such office ceases to exist, or becomes known by another name, or that any such office is reconstituted, the

Board, by resolution unanimously approved, and with the approval of a two-thirds vote of the Nominators, may temporarily or permanently substitute for the offices named in the preceding subsection such other offices as may in their belief more nearly meet the original intent of this Act, and shall file a copy of such resolution as approved by the Nominators with the Registrar of Companies.

First
Board of
Foundation

7. (1) The first Board of Directors of the Foundation shall consist of the Petitioners named in this Act and shall possess all of the powers given to the Board of Directors hereunder and shall be governed by all of the provisions of this Act relating to the Board of Directors.

(2) Each member of the first Board shall serve for a term of two calendar years and thereafter subsequent Boards shall be nominated and appointed by the Committee of Nominators as provided in this Act.

Committee
meetings

8. (1) The Committee of Nominators shall meet thereafter at least once in every two calendar years on the call of the President of the Board, and during the quarter within which the anniversary of their first meeting shall fall, for the purpose of nominating and appointing a new Board.

(2) The Committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the Committee are present.

(3) Each member of the Committee shall have one vote.

Board of
Directors

9. (1) The Foundation shall, subject to the provisions of this Act, be managed and administered by a governing board of not less than five and not more than eleven members, nominated and appointed by the Committee of Nominators from among men and women who in the opinion of such Nominators have evinced an interest in the welfare of the community, which shall be known as the Board of Directors of the Foundation.

(2) The Board may recommend to the Nominators an increase or decrease in the number of members of the Board, but the said Nominators shall have sole discretion to act or not act on such recommendation.

Tenure of
office

10. (1) Each member of the Board shall serve for a term of two calendar years, except that when a member has been nominated and appointed to complete the unexpired portion of a previously serving member's term, he shall serve only for as many years as are required to complete such term.

(2) No member of the Board shall serve for more than ten continuous years; but any member who has so served shall be eligible for re-nomination and re-appointment after two year's absence from the Board, for a further period of five years.

(3) The term of office of members of the Board shall begin on the first day of May of the year of their appointment, and shall terminate on the last day of April of the year in which their term expires.

(4) The term of office of any member of the Board shall immediately terminate:

- (a) upon his death, resignation, or removal from the Calgary District;
- (b) upon his having served ten continuous years, or a total of fifteen years as a member of the Board;
- (c) in the event of his absence without excuse acceptable to the Board from three consecutive meetings of the Board;
- (d) by resolution of the Board, when in the opinion of the Board, a member is guilty of gross misconduct; or
- (e) by resolution of the Board, because of incapacity for any cause which in the opinion of the Board may prevent him from discharging his duties for nine months or more.

(5) Upon any vacancy occurring in the Board the Chairman of the Board shall notify the Chairman of the Committee of Nominators.

(6) The Chairman of the Committee of Nominators may call a special meeting of the Nominators to nominate and appoint a suitable person to fill such vacancy for the unexpired portion of the term, and shall call a special meeting for such purpose if the numbers of the Board have by such vacancy fallen below a majority of the full Board.

Board
meetings

11. (1) The Board shall meet at least once in each calendar year.

(2) The Board shall act by a majority of its members present at a meeting, but shall not act unless a majority of the Board are present.

(3) Each member of the Board shall have one vote.

(4) A resolution in writing, signed in one instrument or in counterpart by all the members of the Board without their meeting together, shall be as valid and effectual as if it had been passed at a meeting of the members of the Board duly called and constituted, and shall be deemed to relate back to any date therein stated to be the effective date thereof.

powers of
Board

12. The powers of the Foundation are vested in and shall be exercised by the Board, and without restricting the generality of the foregoing, the Board may:

- (a) elect its own President and Vice-president, and appoint a Treasurer and a Secretary, or a Secretary-Treasurer, and such other officers and employees of the Foundation as it deems expedient, and may prescribe their respective duties, powers and authority, and may determine the tenure of each such office or the period of employment of each such employee; and such officers and employees, other than the President and Vice-president of the Board, need not be members of the Board;
- (b) fix and determine the remuneration of officers and employees of the Foundation, provided that members of the Board shall receive no compensation for their services except reasonable expenses;
- (c) use, invest or distribute all or any portion or portions of the funds which are available to it, according to the provisions of this Act;
- (d) act by such committees of, or appointed by, the Board as it deems proper to constitute or appoint;
- (e) make by-laws, resolutions, rules and regulations, not inconsistent with any of the provisions of this Act, touching or respecting any or all of the aforesaid powers of the Foundation or of the Board, and also in respect of all matters pertaining to the business, meetings and proceedings of the Board; and
- (f) subject only to the provisions of this Act, shall exercise in its full and absolute discretion all powers and authority that under this Act are exercisable by the Foundation or the Board, saving such as are vested in the Committee of Nominators.

Distribution
of funds

13. (1) The Board is empowered subject to the provisions of this Act, to use and distribute such portions of the funds available to the Foundation as it may deem proper, to advance the objects of the Foundation.

(2) To effect the objects of the Foundation the funds may be used for the assistance of such institutions, organizations, agencies, and bodies as may be engaged in the promotion or advancement of the objects of the Foundation or any of them; and the Board may determine what institutions, organizations, agencies or bodies, whether or not the same are within the Calgary district, are to benefit by that assistance in each year, and to what extent.

Application
of donations

14. (1) The Board shall, in deciding the manner in which funds shall be used or applied, respect and be governed by any trust imposed by the donor in the instrument creating the trust or effecting any gift to the Foundation.

(2) If, however, in the course of time and after the death of such donor, or if the donor was a corporation, after the winding-up thereof, either voluntarily or otherwise, conditions arise whereby in the opinion of the Board, the departure from the terms of the original trust would further the true intent and purpose of the donor, the Board may in its absolute discretion make such a departure to the extent necessary to further the true intent and purpose of such trust.

(3) If, further, changed conditions make it no longer possible, wise or practical in the opinion of the Board, to meet the expressed wish of the donor, the Board may in its absolute discretion use and apply such funds for such purposes as are in their opinion most nearly related to the original intent and purpose of the donor.

(4) If no conditions are imposed by a donor with regard to the use of his gift, the Board may in its absolute discretion use and apply such gift for such purposes as it may deem proper having regard to the provisions of this Act.

(5) This section of this Act shall be deemed to have been assented to by every donor to the Foundation, as a condition to accepting his gift.

Property
held in trust

15. Where any person holds any property in trust for any purpose of a nature similar to the objects of the Foundation, and by reason of the object of the trust having ceased to exist, or the trust having for any cause become incapable of performance, or the trust having for any cause become difficult to perform, such a person as trustee may upon notice to the Foundation apply to a judge of the trial division of the Supreme Court of Alberta, in the Judicial District of Calgary, for an order directing him to hand over such property to the Foundation to be used by the Foundation in the same manner and for the same purposes as other donations made to the Foundation under this Act; and such judge is hereby empowered to make such order for the handing over of such property to the Foundation; and any trustee complying with such an order shall thereupon be relieved and discharged of all further responsibility in respect of such property.

Appoint-
ment of
trustees

16. (1) The Foundation, as soon as practicable after a donation has been received, shall appoint, subject to the provisions of any trust imposed by the donor, one or more trust companies, banks or other fiscal institutions authorized

to carry on business in the Province, to assume the custody and management of the property comprising such donation, or such portion or portions thereof as may be allotted by the Board to such trust companies, banks or other fiscal institutions, and to act as trustees for the Foundation.

(2) The Foundation may at any time, by resolution of the Board, revoke the appointment of any trust company, bank or other fiscal institution as such trustee, and may appoint such other trust company, bank or other fiscal institution as trustee in place thereof, as the Board may deem advisable.

Transfer,
etc. of
property

17. All transfers, assignments or conveyances of property by the Foundation shall be executed by and on behalf of the Foundation in such manner as the Foundation may from time to time by resolution prescribe, and shall further be executed by the trustee for the time being of the property to be so transferred, assigned or conveyed.

Powers of
trustees

18. Every trust company, bank or other fiscal institution during its continuance in office as trustee for the Foundation shall:

- (a) have the custody of and efficiently manage all property entrusted to it by the Foundation or by any donor on behalf of the Foundation and make all investments, re-investments, conversions, sales or dispositions thereof which may at any time or from time to time appear necessary or desirable, but no trust company shall make any new investments or re-investments in any property or security other than securities in which a trustee or trust company may invest trust moneys under the laws of the Dominion of Canada;
- (b) observe, carry out, perform and give effect to all terms, provisions and conditions expressed in any instrument creating a trust;
- (c) give effect to and observe all directions with regard to any property entrusted to it by the Foundation under the provisions of this Act, which may at any time or from time to time be given in writing by the Board, provided such directions are consistent with the provisions of this Act;
- (d) distribute from the moneys in its possession such sums and in such manner as the Board shall at any time or from time to time by resolution direct;
- (e) pay all such accounts and expenses of the Foundation as the Board shall direct in writing.

Donations

19. (1) Any form of words shall be sufficient to constitute a donation for the purposes of this Act as long as the donor indicates an intention to contribute presently or prospectively to a fund or foundation of the general character indicated in this Act.

(2) This Act is to be construed liberally and in furtherance of the idea that the courts of the Province will assist in making effective gifts and legacies for the objects and purposes set forth in section 5 hereof, and will in case of any failure on the part of the Foundation or those entrusted with the powers of appointing the Board, or otherwise howsoever, do what is necessary to carry out the true intent and purpose of this Act.

Rule against
perpetuities
inapplicable

20. The rule against perpetuities shall not apply to donations made to the Foundation.

Donations
in trust

21. When a donation has been made to the Foundation in trust of any property to take effect in future, the Board is empowered to accept and exercise any powers of appointment, settlement or distribution with respect to the income in whole or in part derivable from such property in the interim, and also power to nominate executors and trustees in the manner provided in the instrument creating the trust.

Donations
outside
district

22. Where property has been donated to the Foundation and the donor is desirous that the donation shall be used in accordance with the objects of the Foundation but in whole or in part for the development or assistance of a project or scheme not situated in the Calgary district, the Board may accept and exercise the trust in respect of such donation as fully and effectually as if it were made for the benefit of residents of the Calgary district.

Annual
audit

23. (1) The Foundation shall cause an audit to be made at least once in every fiscal year of the receipts and disbursements of the Foundation, by an independent auditor, and shall file with the Registrar of Companies a certified statement by such auditor showing the investments made of all funds donated to and invested in trustees for the Foundation, the amount of income received during the preceding fiscal year, and the purpose for which the income has been used, and a classified statement of the expenses of the trustees and of the Board.

(2) It shall be the duty of the trustees to give such auditor full information and permit him to make all necessary inspections to enable such audits to be made.

Reports to
Registrar of
Companies

24. The Secretary of the Board shall, once in each calendar year, file with the Registrar of Companies the following:

- (a) a statement in the form of a balance sheet, audited and signed by the Foundation's auditor, and containing general particulars of its liabilities and assets, revenue and expenditure;
- (b) a list of members for the time being of the Board, with their addresses and occupations; and
- (c) a copy of any resolution made in the preceding year required by this Act to be filed with the Registrar.

Adminis-
trative costs

25. Reasonable administrative expenses incurred by the Board may be charged against all trusts, on a pro rata basis.

Coming into
force

26. This Act comes into force on the day upon which it is assented to.