

RAYMOND A. SMITH 1917-1955  
RAYMOND A. SMITH, JR.

LAW OFFICES  
RAYMOND A. SMITH  
35 MAIN STREET  
EAST HAMPTON, N. Y.  
TELEPHONE EAST HAMPTON 4-1100

June 25, 1962

*Copies sent to  
all Directors*

Mrs. Avis S. Usher  
19 Pleasant Lane  
East Hampton, New York

Re: East Hampton Visiting Nurse Association

Dear Avis:

I owe you and Mrs. Briggs an apology for not being more diligent in connection with the committee appointed by the President of the East Hampton Visiting Nurse Association to review the Constitution and By-laws of the organization.

I have secured from Albany a certified copy of the original Certificate of Incorporation of the East Hampton Visiting Nurse Association which was filed on December 31, 1920. The original certificate was for the incorporation of the membership corporation and, as required by the law, was approved by the State Board of Charities and was also approved by Walter F. Jaycox, a Justice of the Supreme Court. To amend the name and purposes of the organization or to change the number of directors (listed in said certificate as seven), it would be necessary for the Certificate of Incorporation to be amended. This can only be done at a general membership meeting called on at least ten days' written notice, which notice must specify the proposed changes. Any such changes would also have to be approved by the Department of Social Welfare of the State of New York, which is the successor to the State Board of Charities, by the Attorney General of the State of New York and by a Justice of the Supreme Court. In the normal course of events, I would think it a wise procedure to present to the Attorney General and to the State Board of Charities, the proposed amendments before they were submitted to the general membership.

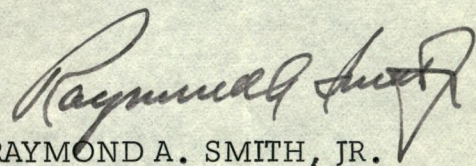
A change in the Certificate of Incorporation would require many other changes. The organization has been approved as a tax-free organization; not only is it free from paying taxes itself, but it has been approved by the Director of Internal Revenue as an organization to which contribution by individuals may be deducted as charitable gifts. Any changes would, of course, require a re-opening of the status and a new application for a tax exempt status. It is my understanding that in your annual reports you have indicated the type of services now performed by the organization, which are somewhat changed from the original purposes, and that no question has been raised by either the State or Federal authorities. I see no reason why this status should be disturbed.

June 25, 1962

With reference to the Constitution and By-laws, it appears to me that they were originally drafted at a time when the Visiting Nurse Association was an unincorporated association because they provide that the directors themselves shall have the right to amend the Constitution and By-laws; whereas, in a membership corporation the Constitution and By-laws must be acted upon and approved by the members. Of course, changes may be proposed by the officers and directors and usually are, but the actual amendments must be voted upon by the membership at a meeting called upon notice of the proposed changes. It appears to me that the increase in the number of directors from seven to eighteen cannot be justified because the number of directors are limited to seven, and I believe your committee should recommend to the directors and members at their next regular meeting that the Board of Directors be reduced to the number of seven authorized by the Certificate of Incorporation as soon as practicable. The directors whose terms expire, or any directors who may wish to resign as such, could be placed upon an Advisory Board whose functions it would be to aid and advise the Board of Directors. If it is felt that a larger number of directors is necessary or desirable, then we must amend the Certificate of Incorporation. I think that the Constitution and By-laws as they now stand, except for the provisions therein that the Constitution and By-laws may be amended by the directors themselves, are adequate. They should, however, at some future date, be amended to provide that the Constitution and By-laws may be amended by the members and not by the Board of Directors in order to comply with the provisions of the Membership Corporation Law.

If it is the consensus of opinion of the officers and directors that the committee should proceed, I think that a specific decision should be made as to whether or not it is the consensus of opinion that a Certificate of Incorporation should be changed by (1) changing the name, (2) changing the purposes and (3) providing for a different number of directors (the law allows a variable number) or whether it is the consensus of opinion that at this time minor changes in the Constitution and By-laws be made which could be presented to the membership at a meeting called for that purpose at some later date.

Sincerely yours,



RAYMOND A. SMITH, JR.

RAS/bas