

CORPORATIONS: EXTENSION OF  
FRANCHISE.

Meaning of "about to expire" and  
"not about to expire". Extension  
of franchise of corporations can be  
made only on payment of fees.

June 27th, 1933



Hon. Dwight H. Brown  
Secretary of State,  
Jefferson City, Mo.

Dear Sir:

We have your request of June 20th for an opinion from this  
Office upon the following state of facts:

"We regret to bother you so much on requi-  
sitions but under Section 1, page 297, Act  
of 1931, relating to method by which ex-  
istence of corporations may be extended,  
we are in need of an opinion from your  
Department on this statute. It is a ques-  
tion in our mind as to whether or not we  
should charge a full fee the same as charged  
in the original incorporation for these  
amendments, or whether the latter clause  
of that section limits the fee to the or-  
dinary \$5.00 for an amendment. The ques-  
tion seems to be as to where the line should  
be drawn when a corporation is 'about to  
expire', by limitation, or as to when the  
existence is 'not about to expire'."

Under Section 4555 R. S. 1929, certain powers are given to  
corporations in this State, namely, among others, the power  
to exist as a corporation for a definite period of time. Where  
no time is fixed for the duration of the corporation, it is  
for the statutory period of twenty years. State ex rel v.  
Road Company, 207 Mo. 85.

Under the above statute, a corporation can continue in existence  
for a certain definite length of time. When this time is con-  
sumed the life of the corporation, if not renewed, "expires".  
The meaning of the term "about to expire" means that the cor-  
poration is approaching the end of its original period for which  
it was authorized to exist and do business. We are unable to  
draw a dividing line between a corporation which is "about to  
expire" and a corporation which is "not about to expire". The  
distinction between the two is a question of fact. For example,

if the corporation has considerable length of time in which to operate under its original charter, clearly then it is a corporation whose existence and corporate rights are "not about to expire". On the other hand, if a corporation has been organized for a period of twenty years, and nineteen years and six months of that time have passed since its incorporation, and no effort has been made to renew it, then the corporation is one whose charter is "about to expire". The term "about to expire" means that the corporation is approaching the end of its charter term, while the term "not about to expire" means that the corporation has considerable time under its original charter in which to exist and continue as a corporation.

As to what fee a corporation should pay, which desires to take advantage of the Laws of B31, p. 297, with reference to extending its corporate existence, we must read this provision in connection with Section 4556 R. S. 1929, which among other things provides:

"Provided further, that the duration of such corporation shall not be continued as aforesaid, until such corporation shall pay into the state treasury fifty dollars for the first fifty thousand or less of the capital stock of the corporation, and a further sum of five dollars for every additional ten thousand dollars of its capital stock, as provided by law."

Such has been the construction placed upon this statute by the Supreme Court, in *State ex rel. v. Roach*, 269 Mo. 437. The Court said, l.c. 443:

"On a similar, though slightly different, state of facts, the Supreme Court of New Jersey, held as we do (*National Lead Co. v. Dickinson*, 70 N. J. L. 596) that in order to extend the corporate existence the tax must be paid and this is in accordance with the interpretation heretofore uniformly placed upon the section by the public and executive officers."

Hon. Dwight H. Brown

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It is therefore the opinion of this Office that before any corporate existence can be extended under the Laws of 1931, p. 297, that the corporation wishing such extension must pay the fees provided for in Section 4556 R. S. 1929.

Respectfully submitted,

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APPROVED:

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