

CORPORATION : Charter of expired corporation
cannot be extended; new corporation
may be organized.

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Hon. Dwight H. Brown,
Secretary of State,
Corporation Department,
Jefferson City, Missouri.

Attention: Mr. Barks.

Dear Sir:

We have your request of June 29th for an opinion as to the right of a corporation to extend its charter after the same has expired, and which request of yours is as follows:

"The Bank of Higginsville, a banking corporation doing business at Higginville, LaFayette County, Missouri, was incorporated as such banking corporation under the laws of Missouri, July 28, 1882, and while the charter issued to the corporation did not specify the period or duration for which the charter was issued, the articles of agreement filed in the State Department provided that the corporation should have a corporate existence of fifty years.

The present bank officials, the office of the Secretary of State, and the State Finance Commissioner all apparently overlooked the fact that this charter expired by lapse of time July 28, 1932. Thereafter June 27, 1933, all of the stockholders of said bank having waived formal notice of a meeting called for the purpose of extending the corporate existence of the corporation voted to extend the corporate life of said corporation for a period of fifty years from July 28, 1932, and a copy of said minutes were duly recorded in the Recorder's office at Lexington, Lafayette County, Missouri, and was this day presented to the State Finance Commissioner and Secretary of State for the purpose of effectuating an extension of said corporate existence.

The fees due and payable to the state of Missouri for an extension of a charter are exactly the same as the fees which would be paid if a new

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corporation under the same name was organized.

The statutes make express provision for the extension of the corporate existence of a charter at a time when the same is about to expire by lapse of time but apparently is silent on whether an extension may be had of the charter by limitation even though the extension requested dates from the expiration date.

This corporation has maintained itself in good standing in the office of the Secretary of State by filing all reports required and complying with the statutes in every respect and is still doing business as a banking corporation.

Will you please advise us whether an extension can be made at this time of this corporate charter, said extension to date from July 28, 1932, the date of the expiration, or whether it will be necessary for the parties interested to reincorporate and then effectuate a transfer of the properties and assets to the new corporation? "

When a corporation charter expires by limitation, it ceases to exist. It is "dissolved". Bradley v. Reppell, 133 Mo. 545, 32 S. W. 645.

The Supreme Court said that upon the expiration of a corporation charter, a corporation is dead. We quote from Park Company v. Gibson, 268 Mo. 394, l.c. 402, as follows:

"It has been held in this State under our statute, (Sec. 19, p. 329, G.S. 1865) that after the expiration by statutory limitation of a corporation's life, its property goes to its directors as trustees for the stockholders, and does not, as at common law, revert to the grantor. (Bradley v. Reppell, 133 Mo. l.c. 552; Richards v. Coal Co., 221 Mo. l.c. 158.) From this alone it follows on principle that the defunct corporation could not be sued after its dissolution and death by the expiration of its charter; in such wise, at least as to foreclose a lien against lands it no longer owned; but which by operation of law had passed to its late directors as trustees for its shareholders. For the corporate entity is dead ipso facto (10 Cyc. 1271)

when its statutory years are accomplished and its holdings of whatever sort, by force of the statute, pass to others."

Section 4561 R. S. 1929 provides:

"Upon the dissolution of any corporation * * * the president and directors or managers * * * shall be trustees of such corporation, with such powers to settle the affairs, collect the outstanding debts and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution."

If the business of the corporation is not wound up by the president and directors, a new corporation may be formed to take over the assets of the old corporation, in which event the creditors and owners of the old corporation will occupy the same position in relation to the new corporation. This procedure was approved in *Scott v. Davis*, 198 Mo. App. 512.

We now come to the proposition, as to whether or not corporate powers may be extended after the expiration of the charter. We must answer this query in the negative. There is no statute authorizing the extension of the corporate powers of a corporation after its charter of existence has once expired. Without such statutory authorization it cannot be extended. That this is the clear meaning of the law of this State is shown by the statute passed in 1931 relating to this subject matter. That statute Laws 1931, p. 297 provides:

"The corporate existence of any corporation, now organized or hereafter to be organized, that is about to expire by limitation, may be extended * * *. Any corporation whose corporate existence is not about to expire, but whose corporate existence is limited may take advantage of this provision and have its corporate existence changed to any stated period of perpetual, * * *."

It will be noticed that the above statute relating to the extension of a corporate existence applies only to corporations whose

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charters have not expired, and does not apply to corporations whose charters have already expired.

It is therefore the opinion of this Office that you cannot extend the charter of a corporation after it has expired, but a new corporation may be organized to continue in the place of the old.

Respectfully submitted,

FRANKLIN E. REAGAN,
Assistant Attorney-General

APPROVED:

Acting Attorney-General

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