

CORPORATION: A stock business corporation may not provide by its articles of incorporation for the distribution of its assets upon dissolution to organizations of a charitable or tax-exempt nature.

Opinion No. 154

July 27, 1964



Honorable Warren E. Hearnes
Secretary of State
Capitol Building
Jefferson City, Missouri

Dear Mr. Hearnes:

Your request for an opinion of the Attorney General dated April 2, 1964, poses the question of whether an amendment to the Articles of Incorporation of a stock business corporation is valid which provides for the distribution of its assets upon termination to organizations of a charitable or tax-exempt type described in Section 501(c)(3) of the Internal Revenue Code of the United States.

The corporation involved, Eden Publishing House of St. Louis, was incorporated under Chapter 42, Articles I and VIII, RSMo 1889. Those sections were revised under the new corporation code in Chapter 351 of RSMo 1959. By virtue of Section 351.690, RSMo 1959, which provides in part: "(4) All of the provisions of this law to the extent therein provided shall apply to all other corporations, existing under prior general laws of this state and not specifically mentioned in subdivisions (1), (2) and (3) of this section", the corporation is subject to the new code.

Section 351.085 of the new code authorizes a corporation to amend its articles of incorporation in any respect as may be desired, by resolution of the board of directors and an assenting vote of a majority of the outstanding shares entitled to vote, "provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of the amendment".

Honorable Warren E. Hearnes

Section 351.055(9) states that articles of incorporation may contain "any . . . provisions, not inconsistent with law, which the incorporators may choose to insert". The question here involved is whether the proposed amendment is consistent with law.

Sections 351.470, 351.490 and 351.525, RSMo 1959, provide for the disposition of the assets of stock corporations upon dissolution. These sections cover both voluntary and involuntary dissolution, and provide that after paying or adequately providing for the payment of all obligations, the remainder of the assets of a corporation shall be distributed among the stockholders according to their respective rights and interests. The proposed amendment purports to distribute upon dissolution any remaining assets to organizations described in Section 501(c)(3) of the Internal Revenue Code. Such a disposition would violate the above cited statutes, and be contrary to the public policy of the state therein declared which is to distribute any remaining assets among the shareholders of the corporation on a pro rata basis.

CONCLUSION

It is the opinion of this office that the proposed amendment to the Articles of Incorporation of Eden Publishing House, which provides that in the event of termination, dissolution or winding up of the corporation, its remaining assets shall be distributed only to one or more organizations described in 501(c)(3) of the Internal Revenue Code, does not conform to the law of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donald L. Randolph.

Very truly yours,


THOMAS F. EAGLETON
Attorney General