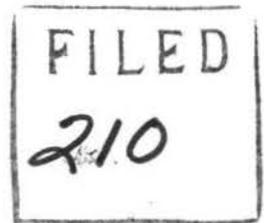


CORPORATIONS: A corporation must submit a separate
SECRETARY OF STATE: annual registration report for each
year the corporation was in forfeiture
and a corporation must pay the maximum registration fee of \$40 for
each year the corporation was in forfeiture before the forfeiture
may be rescinded by the Secretary of State. Rescission restores the
corporation to good standing as of the date of forfeiture, except
for exceptions set forth in Section 351.540(2), Senate Bill No. 14,
78th General Assembly.

OPINION NO. 210

December 12, 1975

Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Kirkpatrick:

This is in response to your request for an opinion on the following questions concerning rescission of a forfeiture of corporate rights:

- "1. Must the Secretary of State require that the corporation submit a separate annual registration report for each year the corporation was in forfeiture?
- "2. If the answer to 1 is yes, must the corporation pay the registration fee for each year?
- "3. Since the annual registration report fee is on a graduated basis through December each year and assuming the report is required for each year, should the required fee be the basic fee (\$10.00) or the maximum fee (December \$40.00) for each year or fraction thereof of forfeiture prior to the year of rescission?
- "4. Assuming again that the corporation must submit all previous annual reports for the years in forfeiture and pay fees therefor, will such payment be a condition precedent to the rescission?

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"5. Does the rescission restore the corporation to good standing during the period it was in forfeiture?"

Section 351.525, Senate Bill No. 14, 78th General Assembly, provides:

"If any corporation:

(1) Fails to comply with the provisions of this chapter with respect to its annual registration (but not the 'first registration' required in section 351.120), or the payment of its annual franchise tax on or before the thirty-first day of December;

(2) Procures its franchise through fraud practiced upon the state;

(3) Has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate any section or sections of the criminal code of the state of Missouri after a written demand to discontinue the same shall have been delivered by the secretary of state to the corporation, either personally or by mail; (If mailed, the notice shall be deemed to be delivered five days after it has been deposited in the United States registered mail in a sealed envelope addressed to such corporation at its registered office in this state.) or

(4) After written notice by the secretary of state to any officer of the corporation at his address as last known to the secretary of state, has failed for sixty days to appoint and maintain a registered agent in this state; the corporate rights and privileges of the corporation shall be forfeited, and the secretary of state shall thereupon cancel the certificate, or license, of the corporation by appropriate entry on the margin of the record thereof, whereupon all the powers, privileges and franchises conferred upon the corporation by the certificate, or license, shall, subject to rescission as provided in this chapter, cease and determine; and the secretary of state shall

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notify the corporation by mail, addressed to its registered office, as disclosed by the records of his office, that its corporate existence and rights in this state have been forfeited and canceled, and the corporation dissolved subject to rescission as provided in this chapter; and the directors and officers in office when the forfeiture occurs shall be the trustees of the corporation, who shall have full authority to wind up its business and affairs, sell and liquidate its property and assets, pay its debts and obligations and to distribute the net assets among the shareholders; and the trustees as such shall have power to sue for and recover the debts and property due the corporation, describing it by its corporate name, and may be sued as such; and the trustees shall be jointly and severally responsible to the creditors and shareholders of the corporation to the extent of its property and effects that shall have come into their hands."

Thus, if a corporation commits one of the enumerated acts or omissions, its corporate rights and privileges shall be forfeited.

When corporate rights are forfeited under Section 351.525(1) or Section 351.525(4), Senate Bill No. 14, 78th General Assembly, the Secretary of State may rescind the forfeiture under Section 351.540, Senate Bill No. 14, 78th General Assembly, which provides:

"The secretary of state may rescind the forfeiture of the corporate rights of any corporation, declared under the provisions of subdivisions (1) or (4) of section 351.525, upon presentation of an affidavit signed by any of the directors or officers in office when the forfeiture occurred acting in his capacity as one of and on behalf of the statutory trustees constituted under section 351.525 and a statement by the director of revenue that the corporation does not owe any state taxes and that the trustees of the corporation have filed a franchise tax report for each year in forfeiture as of the time of the application for rescission of the forfeiture, and that the trustees of the corporation have paid to the state a fee equal to the amount of

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franchise taxes that were owing at the time of forfeiture and for each year of forfeiture and which would have been payable had the corporation been in good standing, including all penalties and interest which accrued prior to forfeiture or after forfeiture. The affidavit shall recite that the trustees have caused the correction of the condition or conditions giving rise to the forfeiture. At the time of such filing and the presentation of the affidavit and other required statements, the trustees shall likewise tender and pay all fees and charges, and all penalties which may have accrued. The secretary of state may demand such other and further proof as he may deem necessary before rescinding any such forfeiture. For rescinding such forfeiture there shall be paid to the state a fee of fifty dollars; provided, no such forfeiture shall be rescinded after one year from the date of its entry for less than the fees required by law for original incorporation."

Upon rescission of a forfeiture, corporate rights and privileges are restored as of the date of the forfeiture (Section 351.540(2), Senate Bill No. 14, 78th General Assembly).

The resolution of your questions depends upon whether or not Section 351.540 requires the filing of registration statements and the payment of registration fees. In this regard, the primary goal of statutory construction is to ascertain and to give effect to the legislative intent. Edwards v. St. Louis County, 429 S.W.2d 718 (Mo. Banc 1968). Effect should be given to every word, phrase, and sentence utilized in the statute. State at inf. Taylor ex rel. Oster v. Hill, 262 S.W.2d 581 (Mo. Banc 1953).

As recognized by several jurisdictions, statutes such as Section 351.525 are primarily designed to aid in the enforcement of laws requiring registration, fee payments, and tax payments. See Sale v. Railroad Commission, 104 P.2d 38, 41 (Cal. 1940); Spector v. Hart, 139 So.2d 923, 927 (Fla.App. 1962); and Isbell v. Gulf Union Oil Co., 209 S.W.2d 762, 764 (Tex. 1948). Bearing in mind the purpose behind Section 351.525, we conclude that Section 351.540 requires the filing of registration statements and the payment of registration fees as a condition precedent to rescission of a forfeiture.

If corporate status has been forfeited for failure to comply with registration requirements (Section 351.525(1)) or for failure

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to appoint and maintain a registered agent in Missouri (Section 351.525(4)), registration reports and registration fees must be filed for the years of forfeiture in order to comply with Section 351.540 (1) which requires that the trustees have caused the "correction of the condition or conditions giving rise to the forfeiture," and that the trustees file "required statements" and "tender and pay all fees."

Section 351.125 provides for an annual registration fee in a graduated amount based on the date of the corporate registration. A corporation which has failed to pay the registration fee for a year during which its corporate rights were forfeited must pay a fee of \$40 for the annual registration for that year, because December was the last month of that year in which the registration fee could have been paid.

The conclusion that the filing of registration reports for each year of forfeiture and the payment of a registration fee of \$40 for each year of forfeiture constitute condition precedents to rescission of forfeiture of corporate rights is supported further by the fact that the restoration of corporate rights and privileges is effective as of the date of forfeiture. If corporate rights and privileges are restored for each of the years of forfeiture, the corporation should be required to pay registration fees and file registration reports for each of those years. Due to statutory amendments noted in this opinion, changes in the law necessitate withdrawal of Opinion No. 40, Spradling, March 1, 1973, and Opinion No. 317, Kirkpatrick, September 29, 1970.

Lastly, in regard to your final question concerning restoration of corporate good standing, it is our view that the question is resolved by Section 351.540(2), Senate Bill No. 14, 78th General Assembly, which provides:

"Upon the issuance of a certificate rescinding the forfeiture of the corporate rights of a corporation, the restoration of corporate rights and privileges shall have effect from the date of the forfeiture, and all acts of the corporation, in the period between the date of forfeiture and the date of the rescission of the forfeiture shall be thereby confirmed and held as the acts of the original corporation; except that, any judgment obtained against any person in his capacity as a trustee under section 351.525 shall not be vacated by reason of any rescission under this section, but shall continue in full force and

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effect notwithstanding the rescision. No corporation shall prosecute any action enumerated in section 351.535 following a rescision under this section if the action was filed after the forfeiture of the corporation's corporate rights but prior to the rescision of that forfeiture."

Thus, upon rescission of forfeiture, corporate good standing relates back to the date of the forfeiture, except that judgments against trustees are not vacated and the rescission does not retroactively validate filing of actions in violation of Section 351.535, RSMo 1969, which prohibits corporations under forfeiture from maintaining action for collection of bills or enforcement of contracts.

CONCLUSION

It is the opinion of this office that a corporation must submit a separate annual registration report for each year the corporation was in forfeiture and a corporation must pay the maximum registration fee of \$40 for each year the corporation was in forfeiture before the forfeiture may be rescinded by the Secretary of State. Rescission restores the corporation to good standing as of the date of forfeiture, except for exceptions set forth in Section 351.540(2), Senate Bill No. 14, 78th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my assistants, B. J. Jones and W. Mitchell Elliott.

Yours very truly,



JOHN C. DANFORTH
Attorney General