DISSOLUTION OF BENEVOLENT CORPORATIONS: The proper method of securing service upon a benevolent corporation which has no place of business and whose officers are all deceased is by publication.

January 4, 1957

Honorable James E. Woodfill
Prosecuting Attorney
Vernon County
Nevada, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"I have been requested to institute proceedings by information in the nature of a quo warranto under Section 352.240 of the Missouri Revised Statutes of 1949. The grounds for such proceeding are that the corporation has neglected to use its franchises for two years last past. In fact, I am informed that the corporation has no property or assets, has no business office, has elected no officers since about 1930 and the last known officers are deceased. The corporation was organized in 1925 under what is now Chapter 352 of the Missouri Revised Statutes for 1949 and has a perpetual existence. It was apparently abandoned about 1930 and now another group of persons desire to incorporate under the same name but were denied corporate existence by the Secretary of State because the old corporation is actually still in existence, even though it has neglected to use its franchise.

"In an early case it was held that where the complaint is that the corporation, legally organized, has

ceased to exist or there has existed an entire non-user of corporate franchises and a neglect to choose corporate officers for a great length of time, the Corporation itself is the proper defendant in quo warranto. State ex inf. Wear vs. Business Men's Athletic Club, 163 S.W. 901.

"My inquiry is as to the question of service on the corporation. Under the above circumstances, the only service possible would be by publication such as is provided in Section 351.555 which relates to the dissolution of business corporations. But I find no statute authorizing such service by publication on benevolent corporations proceeded against by quo warranto as provided in Section 352.240.

"Would your office please render to me an opinion on the following questions:

"1. What would be the proper method of service in the above proceeding?

"2. If the proceeding is at the relation of a private person, is it necessary to first secure the consent of the Circuit Court before filing same?

"I shall appreciate your opinion on the above matters."

Paragraph 4 of Section 352.240, RSMo 1949, reads:

"4. And it shall be the duty of the attorney general, or circuit or prosecuting attorney of the proper circuit or county; whenever any credible person shall, in writing, make complaint to him upon affidavit of information

> and belief, that any corporation formed under this chapter has, in any material matter, willfully misused, or, for two years last past, has neglected to use its franchises,or has otherwise become liable to forfeit its charter, to inquire diligently into the grounds of such complaint, and upon reasonable cause shown therefor, to institute proceedings by information in the nature of a quo warranto, looking to a dissolution of such corporation and a forfeiture of its corporate rights."

Section 351.555, RSMo 1949, reads:

> "Every information in equity for the dissolution of a corporation shall be filed by the attorney general in the circuit court of the city or county in which the registered office of the corporation is situated. Upon the filing of such information in equity, summons shall issue, which summons shall be served by leaving a copy thereof with any officer or agent of such corporation if he can be found in such county. In case a return is made thereon that no officer or agent of such corporation can be found in such county, then the attorney general shall cause publication to be made in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such suit, the names of the parties thereto, the title of the court, and the time and place of the return of the summons. The attorney general may include in one notice the names of any number of corporations against which informations are filed returnable to the same term of court. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney

> general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for three successive weeks, and the first publication thereof may begin at any time after the return is filed. Unless a corporation shall have been served with summons, no default shall be taken against it at any term of court which begins within thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the state, unless the decree is against the corporation and such cost can be collected from it. The cost of publication shall include full payment for three publications of such notice and for the certificate of the publisher that such publication was made, and shall not exceed the sum of ten dollars and in addition thereto the sum of twenty-five cents for each corporation named in such notice. No other costs or charges shall be allowed or paid for any other service performed with relation to such information in equity."

While it is true that the above does not specifically mention benevolent corporations we believe that it is the clear intent of the statute that benevolent corporations come within its compass as to the matter of service.

Since no service would be possible under the circumstances set forth by you other than by publication we believe that this would be the proper manner of service since there are no officers upon whom service can be had. If this were not the case then there would be no method of dissolving such a corporation as you have in mind and we cannot believe that our law would be inadequate to handle situations of this sort.

As to your second question, we believe that a private individual filing such a proceeding as is here under discussion must obtain leave of court. In the case of State

ex rel. Stewart v. McIlhany, 32 Mo. 379, l. c. 382, the Missouri Supreme Court stated:

> "Where the attorney general files an information ex officio, it is not necessary for him to obtain the leave of the court. But informations at the relation of private persons, whether under the statute of Anne or under our statute, or exhibited as at the common law, can be filed only by leave of the court. The information is not granted as of course, but depends upon the sound discretion of the court under the circumstances of the case."

In the case of State v. Rose, 84 Mo. 198, l.c. 201, the court stated:

> "1. There is no doubt about the jurisdiction of the circuit court. It is an information filed by the prosecuting attorney ex officio. Informations by the attorney general or prosecuting attorney, ex officio, may be filed without leave, as a matter of course. Informations by either officer, at the relation of an individual, must be filed by leave of court. State ex rel. Stewart v. McIlhany, 32 Mo. 382; State ex rel. v. Hequembourg, 38 Mo. 535; State ex rel. v. Vail, 53 Mo. 97; State ex rel. v. Townley, 56 Mo. 107."

As late as 1945 the Rose case was cited with approval in the case of State v. Beckman, 353 Mo. 1015, l.c. 1022.

CONCLUSION

It is the opinion of this department that the proper method of securing service upon a benevolent corporation

which has no place of business and whose officers are all deceased, is by publication.

It is the further opinion of this department that in such proceeding by a private individual leave of court must first be obtained.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:lc