

Corporations, Extension of Term of. Extension of Term of Corporations, When Made.

Under Sections 412 to 414 and 562 of the Civil Code extensions of the term of corporations must be made at a stockholders' meeting held prior to the dissolution of the corporation, as after such date the stockholders have no authority to act in such manner.

Compiled Statutes of 1887 contain no provision for the extension of the term of corporate existence.

Corporations are dissolved at the expiration of the time limited by their charter.

Note:—This opinion was inadvertently left out of the Report for 1906-08.

Helena, Montana, April 19, 1907.

Hon. A. N. Yoder, Secretary of State, Helena, Montana.

Dear Sir:

Your request for an opinion upon the following state of facts received.

The Flint Creek Mining Company was incorporated under the laws of the Territory of Montana, and a certificate of incorporation issued to it on March 9th, 1887, in which the term of its existence was fixed at twenty years. In April 1907, the chairman of an alleged stockholders meeting of such corporation presented to the office of the Secretary of State a certificate of proceedings to extend the corporate term of said corporation. This certificate recites that at a regular meeting of the Board of Directors held in Butte, Montana, on the 14th day of February, 1907, it was decided to take the proper and legal measures to extend the corporate term of existence of said corporation for a period of twenty years; and that for such purpose a meeting of the stockholders of said corporation was called for the second day of April, 1907, at which meeting more than two-thirds of all the stock of such corporation was represented; and that the representatives of two hundred and seventy-four thousand shares voted in favor of the extension and no votes were cast against it, and that such shares so voted were more than two-thirds of all the shares of stock in said corporation. This certificate was signed and sworn to by the chairman of such meeting on April 3rd, 1907.

From the above facts it appears that the term of the corporate existence of said corporation expired on March 9, 1907, which was twenty-four days before the date on which the alleged stockholders' meeting was held, at which it was voted to extend the term of corporate existence.

Section 660 of the Civil Code reads as follows:

"A corporation is dissolved:

1. At the expiration of the time limited by its charter."

Section 561 reads as follows:

"Unless other persons are appointed by the court, the directors of such corporation at the time of its dissolution are trustees of the creditors and stockholders, or members of the corporation, and as such trustees are authorized to execute all grants of real estate owned by such corporation."

The only method for extending the terms of corporate existence is that found in Sections 412 to 414, and by Section 562 of the Civil Code. An examination of all these sections shows that the term of corporate existence can only be extended by vote of the stockholders representing at least two-thirds of the stock, at a meeting called for that purpose.

However, as such corporation was dissolved on March 9, 1907, "at the expiration of the time limited by its charter" it is clear that the former stockholders of such corporation had no authority whatsoever to vote upon the question of extending the corporate existence on April 2nd, 1907, for under Section 561, quoted above, upon the dissolution of a corporation at the expiration of the time limited by its charter, the trustees of such corporation become the trustees of the creditors and stockholders or members of the corporation dissolved, and the affairs of the corporation are placed exclusively in their hands for the purpose of winding up its business.

You are therefore advised that if such corporation was operating under the provisions of the Code as adopted in 1895, and amendments thereof, that by virtue of said Section 560 it was dissolved ipso facto on March 9th, 1907, and that you should refuse to receive and file the certificate of increase of the term of its corporate existence. However, as said corporation was incorporated March 9th, 1887, and has not elected to continue its existence under the provisions of the Code of 1895, as provided for by Section 400 of the Civil Code, the question may be raised as to whether said Sections 560 and 561 applied to such corporation.

The fact that said corporation has not elected to come under the provisions of the Code of 1895, in the manner provided by said Section 400, would seem to prohibit it from extending the term of its corporate existence in the manner provided in Sections 412 to 414, and Section 562 of said Code. If it cannot extend its corporate existence in accordance with such sections there is no authority of law at all by which it can extend its corporate existence, for the reason that the Compiled Statutes of 1887 made no provision whatsoever for the extension of the term of corporate existence, and the rule is that in the absence of such legislative authority the term of corporate existence cannot be extended. Clark and Marshall on Private Corporations, Vol. I. Sec. 56, say:

"Though a corporation, unless the period for which it may exist is limited by statute, has the capacity of perpetual succession, the period for which corporations may exist is now very generally limited by the special or general laws by or under which they are created; and by the weight of authority, after the expiration of the prescribed time, a corporation is dissolved, and ceases to exist for any purpose, unless some provision is

made by the legislature for an extension of its charter. Since corporations can be created by or under legislative authority only, it is only by or under such authority that the charter of a corporation can be extended beyond the period for which it was created."

Even if the Compiled Statutes of 1887 made provision for the extension of the term of corporate existence, this corporation is not now in a position to take advantage thereof, for the reason that under Section 446 of the Fifth Division of the Compiled Statutes it is provided: Upon filing the articles of incorporation in the office of the Clerk of the County, and a duplicate thereof in the office of the Secretary of the Interior, "a certificate in writing in which shall be stated the corporate name of said company and the object or objects for which the company shall be formed, the amount of the capital stock of the company, the term of its existence, not exceeding twenty years" etc. Therefore, the law under which said corporation was incorporated limited the term of its existence to twenty years.

Cyc. Volume 10, page 1271, says:

"If the charter or governing statute of the corporation fixes a definite period of time at which its corporate life shall expire, when that period is reached the corporation is ipso facto dissolved, without any direct action to that end, either on the part of the State, or of its members; and no powers created by the charter or governing statute can thereafter be exercised, except such as are continued by force of the statute law, for the purpose of winding up its affairs."

Therefore you are advised that under the Compiled Statutes of 1887 the corporation was dissolved on March 9, 1907, and that the stockholders had no authority at any date thereafter to vote to extend the term of corporate existence; and that you should therefore refuse to receive and file the certificate of increase of its term of corporate existence.

Very respectfully yours,

ALBERT J. GALEN.

Attorney General.