

Corporations—Charter—Term of Existence—Renewal.

A corporation whose term of existence has expired by law may not renew its term of existence for a period of three years for the purpose of winding up its affairs under Chapter 117, Laws of 1929. Under said chapter extension must be taken before dissolution.

W. E. Harmon, Esq.,
Secretary of State,
Helena, Montana.

August 15, 1930.

My dear Mr. Harmon:

You have requested my opinion upon the subject of whether under Chapter 117, Laws of 1929, the directors of a corporation whose term of existence had expired by law on June 11, 1929, may, after that date, extend the corporate existence of such corporation for a period of three years for the purpose of winding up its affairs.

Chapter 117 was approved March 12, 1929, and owing to the fact that it did not contain an emergency clause it did not become effective until July 1, 1929. The corporation in question was, therefore, under

Section 6010, and the decision of the Supreme Court of Montana in *Merges vs. Altenbrand*, 45 Mont. 355, 123 Pac. 21, dissolved by the expiration of the time limited by its charter prior to the time that Chapter 117 became the law of the state. Said chapter is not applicable to this corporation. The time limited by its charter for its existence having expired, there was no corporate existence which could be extended by any proceedings had under Chapter 117. The corporation had been dissolved before this law took effect, and if a certificate of the character mentioned in such chapter was issued in the case of this corporation the certificate instead of having the effect of extending an existing corporate term would set aside the dissolution that had already occurred under the only law existing at the time of the expiration of the charter.

Even as to those corporations which come within the provisions of the act, Chapter 117 does not contemplate that dissolution having once occurred by operation of law it may be set aside by taking the proceedings mentioned in said chapter. The proceedings referred to in Section 3 are permissive, and may be taken at the option of the directors of a corporation, but, if taken, that fact must occur before dissolution occurs else an entirely different purpose would be accomplished by the chapter than what was intended.

It is my opinion that you should not issue your certificate extending the term of this corporation for a period of three years for the reasons stated above.

Very truly yours,

L. A. FOOT.
Attorney General.