

Opinion No. 174.

**Fire Department Relief Associations—
Cities and Towns—Benevolent
Corporations.**

Held: The corporate existence of a fire department relief association, organized in 1916 under articles prescribing a twenty-year term, terminated in 1936 and the right to extend the term finally expired in 1941, in accordance with Section 5916, Revised Codes of Montana, 1935. Hence, a new corporation must be formed to comprise and function as a fire department relief association.

June 27, 1946.

Mr. John J. Holmes
State Auditor
State Capitol
Helena, Montana

Dear Mr. Holmes:

You have referred to me for an opinion the question whether the Forsyth Volunteer Fire Department Relief Association may continue to operate under its present charter even though the term of its existence, as specified in its Articles of Incorporation, expired in 1936.

In October of 1916 the active members of the Forsyth Fire Department voluntarily associated themselves together to form a corporation known as the "Fire Department Relief Association of the City of Forsyth," the purposes of which were to provide for the relief of sick, injured and disabled members, to provide for and pay pensions to disabled and retired members, to pay pensions to widows and orphans of deceased members, and to do every act and thing necessary and proper to carry such purposes into

effect. The fourth article of the Relief Association's Articles of Incorporation provided: "That the term for which it is to exist is Twenty Years." Thus the corporate existence expired in October of 1936.

Section 5916, Revised Codes of Montana, 1935, provides a procedure for the extension of the term of corporate existence. Under that section, when the term of corporate existence has expired and the corporation affairs have not been finally settled, an extension of the corporate existence may be effected in the manner set forth therein. But the election to continue the corporate existence must be made within five years after the expiration of the charter which is to be renewed; and therefore the Forsyth Volunteer Fire Department Relief Association—whose corporate life expired in 1936—is tardy by a period of five years in availing itself of the right conferred on corporations by Section 5916.

Therefore, organized as it was, I am of the opinion the Forsyth Volunteer Fire Department Relief Association's corporate existence terminated in 1936 and the right to extend such existence expired in 1941, five years after the corporate term.

Since 1936 the Relief Association has been a de facto corporation. However, those who have recognized the legal entity of the corporation by dealing with it as such have no right to object to any defect in its organization and are estopped to question its de facto existence. (*Sun River Stock and Land Company v. Montana Trust & Savings Bank*, 81 Mont. 222, 239, 262 Pac. 1039.)

Whether the incorporation of the Relief Association was under the general corporation laws of the state or under the special statutes relating to incorporation of churches, charities, benevolent and fraternal societies is not now important—for, whether or not a term of years for the corporate existence had to be designated, such a term was specified; and that term has long since expired. If a new corporation is now formed, it appears to me it should be incorporated under the provisions of our statute authorizing incorporation of churches, charities, benevolent and fraternal societies (Section 6453, Revised Codes of Montana, 1935.) Section 6455 provides such corporations "may have continual

succession," and therefore no question of termination of the corporation need ever arise when the new corporation is formed, unless it be the desire of the incorporators to limit the term for some reason.

I am not unmindful of the provisions of Chapter 127, Laws of 1943, but the provisions of that chapter apply only to corporations organized for profit with stockholders who own the outstanding stock of such corporation. No such corporation is here present and therefore said chapter has no application.

You have inquired how the transfer of funds from the old de facto corporation to the new corporation is to be accomplished; but the mechanics of that transaction can be more effectively and properly handled by the City Attorney than by this office in an official opinion.

It is therefore my opinion under the law as given by the legislature that the corporate existence of the Forsyth Volunteer Fire Department Relief Association, organized in 1916 under articles of incorporation which prescribed a twenty-year term, terminated in 1936 and the right to extend the term finally expired in 1941, in accordance with Section 5916, Revised Codes of Montana, 1935. Hence, a new corporation must be formed to comprise and function as a fire department relief association.

Sincerely yours,

R. V. BOTTOMLY,
Attorney General