

Opinion No. 2**Corporations—Religious Corporations—Perpetual Corporate Existence.**

Held: (1) The Secretary of State has authority to grant certificate of perpetual existence to religious corporations, where corporation is duly organized and existing and has fully complied with Laws of Montana.

January 18, 1949.

Mr. Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Mitchell:

You have requested my opinion as to whether or not the Secretary of State may issue a certificate of perpetual existence to a religious corporation.

Section 6453, Revised Codes of Montana, 1935, as amended by Section 1, Chapter 283, Laws of 1947 provides for the incorporation of non-profit corporations for any lawful purposes such as religious, charitable, social, educational, recreational, scientific and other miscellaneous purposes.

Section 6455, Revised Codes of Montana, 1935, prior to its amendment by Section 3, Chapter 283, Laws of 1947 reads as follows:

“ . . . Corporations so organized may have **continual succession. . . .**”

Under such a statute it was questionable whether a religious corporation could have perpetual existence. It is my opinion that “continual succession” as used in the above quoted section did not mean perpetual existence but rather meant only that the corporation could enjoy continued existence during the period set forth in its charter. A grant of perpetual existence would be in the nature of a special privilege and any legislation granting such a privilege should be strictly construed. In *Magnolia Petroleum Co. v. Walker*, 125 Tex. 430, 83 S. W. 2d 929, certiorari denied 296 U. S. 623 56 S. Ct. 144, 80 L. Ed. 442, the court said:

“Legislative grants of property, rights, or privileges must be construed strictly in favor of the state, and whatever is not unequivocally granted in clear and explicit terms is withheld.”

In *Scott Macadamized Road Company v. State of Missouri Ex Rel Hines*, 207 Mo. 54, 105 S. W. 752, 13 Ann. Cas. 656, affirmed in 215 U. S. 336 30 S. Ct. 110, 54 L. Ed. 221, the United States Supreme Court said:

“Where the charter of a toll road corporation limited its corporate existence to fifty years, the further provision that it should

- have 'perpetual succession' implied nothing more than a continuous succession during the term fixed by its charter, and did not create a corporation in perpetuity."

Thus it can be seen that the United States Supreme Court uses the phrase "continuous succession" to mean only that the corporation may have an uninterrupted life for the duration of its charter. Even language as strong as "perpetual succession" has been held not to create a perpetual existence. In *State Ex Rel. Jump v. Lx., B. G. & A. Gravel Road Co.*, 187 Mo. 439, 86 S. W. 170, the court said:

"The term 'perpetual succession' or continued succession meant only a capacity of succession for a period limited in the charter, or a period fixed by general statutes."

Section 5905, Revised Codes of Montana, 1935, set the limit of existence for private corporations as follows:

"Articles of incorporation must be prepared setting forth:

4. The term for which it is to exist, not exceeding forty (40) years. . . ."

Section 5901, Revised Codes of Montana, 1935, defines private corporations as follows:

"Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private."

Interpreting "all other corporations" to include religious corporations, I conclude that the statutory limitation upon the life of a religious corporation in Montana is forty years. This view is also taken in Report and Official Opinions of Attorney General, Vol. 1 at Page 170.

However, Section 3, Chapter 283 Laws of 1947, amends Section 6455, and reads as follows:

"That Section 6455, Revised Codes of Montana, 1935, shall be, and the same is hereby amended to read as follows:

'Section 6455. Upon the filing of the articles by the Secretary of State the corporation shall be created and shall continue to **exist perpetually**, unless otherwise provided by law, . . .'"

I construe Section 6455, as amended, to evidence the intent of the legislature to provide for the perpetual existence of a religious corporation and also authorization for the Secretary of State to issue a certificate to that effect. This opinion is qualified in that it shall apply only to religious corporations formed since the approval of the 1947 amendment to Section 6455, *Supra*, on March 11, 1947, and to religious corporations organized and existing prior to the time of March 11, 1947, that have fully and timely complied with all of the statutory requirements for extension of their corporate existence beyond the 11th of March, 1947.

This opinion does not include nor apply to a religious corporation which did not follow such statutory procedure for extending its corporate existence, but elected to rely upon the "continual succession" clause of Section 6455, Supra (before the 1947 amendment) to extend its corporate existence. Such corporation, for the purposes of this opinion, is deemed to be non-existent.

Therefore it is my opinion that the Secretary of State has authority to issue certificates of perpetual existence to religious corporations hereinabove designated, restricted, and qualified.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.