

Treasury Department, Fiscal Service  
Chicago 54, Illinois

Dear Sir:

You have asked for my opinion upon the following questions:

1. What is the status of a corporation which has obtained a certificate of dissolution by applying for it under Sections 15-1115, 15-1116 and 15-1117, which require a statement under oath that the corporation has no assets, but which corporation is later disclosed to have had assets at the time of dissolution?

2. What is the status of creditors or stockholders under such circumstances?

Chapter 11, Title 15, Revised Codes of Montana, 1947, provides two methods of voluntary dissolution for corporations. The first of these is provided by Sections 15-1108 to 15-1114, and is the method to be followed by corporations having assets. The second is set out in sections 15--1115 to 15-1117, and is specifically designated as a method available only to corporations which have ceased to transact business, and have no assets. Section 15-1115 states:

"Any corporation organized under the laws of this state, which has ceased to transact business, and which has no assets, may be dissolved upon a compliance with the provisions of this act."

Section 15-1117 states:

"Upon the filing of such certified copy of such statement in the office of the secretary of state, such corporation shall thereupon become dissolved, and thereafter the directors shall be relieved from any further liability in connection with such corporation."

The directors of a dissolved corporation become trustees for stockholders and creditors under Section 15-1102, which is applicable to all types of corporate dissolutions. That section provides:

"The directors of any dissolved corporations who are such at the time such corporation shall become dissolved, become upon such dissolution the trustees of the creditors and stockholders of such corporation . . ."

#### Opinion No. 115

##### Corporations—Dissolutions—Powers and Duties of Corporate Officers in Dissolutions—Liability for Corporate Debts and Assets.

**Held:** That Section 15-1102, Revised Codes of Montana, 1947, is applicable to all corporate liquidations, and that directors of a dissolved corporation become trustees of creditors and stockholders thereunder. Filing of a statement that the corporation has no assets, as required by Section 15-1117, does not relieve the directors of this liability where there are actually assets.

September 10th, 1952.

Mr. J. P. Thompson, Assistant Chief  
In Charge  
Division of Loans and Currency,  
Chicago Branch

The effect of these statutes was questioned in *Fitzpatrick vs. Stevenson, et al.*, 104 Mont. 439. There it was said, in part:

"However, section 6011 (now 15-1102) makes the directors of a dissolved corporation the trustees "to settle and liquidate its affairs," regardless of whether the corporation has any assets . . . Hence it is plain that even as to corporations having no assets the statutes make the directors the trustees with full power to settle and liquidate their affairs.

"While the statute denominates the directors as 'trustees' they are in fact but the successors in interest of the corporation, with power to sue on behalf of, and to be sued for the debts of, the corporation."

The above case in clear authority for the proposition that the directors are trustees for the creditors and stockholders where there are any funds, and are successors in interest who may be sued where there are no funds. Section 15-1102 applies to all types of dissolutions and makes the former directors trustees of any funds which may exist, whether or not they have certified that they have no assets.

Whether or not the dissolution might be set aside for fraud or mistake, in proper circumstances, when secured under section 15-1115 is not within the scope of this opinion. However, in ordinary circumstances, the rule of *Fitzpatrick vs. Stevenson* would apply, and the corporation would be dissolved, with the former directors holding the assets in trust for creditors and stockholders.

Therefore, it is my opinion that, upon the facts given, the corporation is dissolved, and the former directors are trustees for the creditors and stockholders.

It is further my opinion that the creditors and stockholders of the dissolved corporation have valid claims against any assets held by these former directors, both as successors in interest of the corporation, and as trustees for those creditors and stockholders.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General