

OPINION NO. 77-089

Syllabus:

A corporation whose articles have been amended to provide for a stated period of existence is not required to file the documents and certificates enumerated in R.C. 1701.86(H) and 1702.47(G) at the expiration of said period. Such a corporation does not terminate its existence when the period of existence set forth in its articles, as amended, expires, but continues as a corporation for the purpose of winding up its affairs, pursuant to R.C. 1701.88(A) and 1702.49(A).

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 12, 1977

I have before me your request for my opinion which reads as follows:

We request your opinion as to whether a corporation may circumvent the dissolution procedures set forth in Sections 1701.86 and 1702.47 of the Revised Code by amending the Articles of Incorporation to insert a provision that the corporation shall have a stated period of existence and indicating the date of the expiration of the charter.

It should be noted at the outset that R.C. Chapter R.C. 1702 concerns non-profit corporations, whereas, R.C. Chapter 1701 concerns, inter alia, for-profit corporations.

R.C. 1701.04(F) and 1702.04(D) state that articles of incorporation may establish the period of existence of a corporation. If not specifically set forth, the period of existence is deemed to be perpetual. The articles of incorporation may be amended from time to time, pursuant to the procedures mandated by R.C. 1701.69(A) and 1702.38(A). R.C. 1701.69(A), to which R.C. 1702.33(A) is in pari materia, provides in pertinent part as follows:

. . . the articles may be amended . . . in any respect if the articles as amended set forth all such provisions as are required in, and only such provisions as may properly be in, original articles filed at the time of adopting the amendment . . .

Because R.C. 1701.04(D) and 1702.04(D) permit a corporation to set forth the period of its existence in the articles originally filed with the Secretary of State, an amendment to the articles establishing a limited period of existence is permissible.

It is next necessary to consider the effect of such an amendment upon the termination of corporate existence. R.C. 1701.88 and 1702.49 concern the winding up of a corporation. Specifically, R.C. 1701.88(A) provides that:

- (A) When a corporation is dissolved voluntarily or when the articles of a corporation have been cancelled or when the period of existence of a corporation specified in its articles has expired the corporation shall cease to carry on business

and shall do only such acts as are required to wind up its affairs, but for such purpose it shall continue as a corporation. (Emphasis added)

It is important to note that the effect of the above sections is not to terminate the corporate existence upon the expiration of the period of existence set forth in the articles. Rather, the corporate entity continues, but only for the purpose of winding up its affairs.

Upon expiration of the period of the corporation's existence specified in its articles, R.C. 1701.86(E) and 1702.47(D) empower the shareholders to adopt a resolution of dissolution. R.C. 1701.86(D) and 1702.47(C)(4) provide a procedure for directors or trustees to adopt a resolution of dissolution. If the resolutions are adopted, R.C. 1701.86(F) and 1702.42(E) require the preparation of a certificate of dissolution. The certificate, upon filing in the office of the Secretary of State, must, pursuant to R.C. 1701.86(H), be accompanied by:

(1) An affidavit of one or more of the persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the counties, if any, in this state in which the corporation has personal property or a statement that the corporation is of a type required to pay personal property taxes to state authorities only;

(2) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing, or that such payment has been adequately guaranteed;

(3) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing;

(4) A receipt, certificate, or other evidence from the bureau of employment services showing that all contributions due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(5) A receipt, certificate, or other evidence from the industrial commission showing that all premiums due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such premium payments.

R.C. 1702.47(G) mandates a similar filing in the case of non-profit corporations.

It should be noted that a resolution of dissolution, which would trigger the necessity of filing a certificate of dissolution, is not required to be adopted by either the directors or trustees of a corporation or its shareholders. R.C. 1701.86 and 1702.47 merely provide that the directors or shareholders may adopt such a resolution. However, if the resolution of dissolution is not adopted and the requisite filings not made, the corporate entity still exists to the extent set forth in R.C. 1701.86. Pursuant to R.C. 1701.86(I) and 1702.47(H), only the filing of a certificate of dissolution causes the dissolution of a corporation.

Therefore, it is my opinion, and you are so advised that a corporation whose articles have been amended to provide for a stated period of existence is not required to file the documents and certificates enumerated in R.C. 1701.86(H) and 1702.47(G) at the expiration of said period. Such a corporation does not terminate its existence when the period of existence set forth in its articles, as amended, expires, but continues as a corporation for the purpose of winding up its affairs, pursuant to R.C. 1701.88(A) and 1702.49(A).