

VOLUNTARY DISSOLUTION
OF CORPORATION :

A corporation seeking dissolution under Section 351.460, RSMo 1949, may be permitted to dissolve without compliance with Sections 351.125 and 351.135, RSMo 1949, if the corporation has not registered and made the affidavit required by these sections.

January 12, 1960



Honorable Walter Toberman
Secretary of State
Capitol Building
Jefferson City, Missouri

Dear Mr. Toberman:

Your request for an official opinion reads:

"This Department has customarily required corporations seeking to dissolve on or after July 1 pursuant to Section 351.460 et seq., RS Mo. 1949, to file the annual registration report and anti-trust affidavit required by Sections 351.120 and 351.135 and to pay the fees provided for in Section 351.125 and 351.135.

"Articles of Dissolution of a corporation, dated July 30, 1959, were received in this office on July 31, 1959. The corporation, through its attorney, has refused to file the 1959 report and affidavit and has refused to pay the fees therefor, which now total \$15.00.

"Is this Department correct in requiring the corporation to file the annual registration report and anti-trust affidavit and remit the \$15.00 fee now due as a condition precedent to dissolution?"

You state that the corporation in question seeks to dissolve under the provisions of Section 351.460, et seq., RSMo 1949, which reads:

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"A corporation may be voluntarily dissolved by the written consent of the holders of record of all its outstanding shares in the following manner coupled with compliance with the provisions of sections 351.470 to 351.480: Upon the execution of such written consent by all the shareholders of record, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or assistant secretary, which shall set forth and contain

- (1) The name of the corporation;
- (2) The names and respective addresses, including street and number, if any, of its officers and directors;
- (3) The agreement signed by all shareholders of record of the corporation consenting to its dissolution;
- (4) That such agreement is signed by all shareholders of record of the corporation or signed in their names by their attorneys thereunto duly authorized."

It will be noted that the above section holds that a corporation may be voluntarily dissolved upon compliance with the provisions of Sections 351.470 to 351.480. Section 351.470 requires that the articles of dissolution be delivered to the Secretary of State for filing. It is conceded that this was done. Section 351.480 reads:

"1. Such articles of liquidation in duplicate shall be delivered to the secretary of state. If the secretary of state finds that such articles of liquidation conform to law, he shall, when all taxes, fees, and charges have been paid as in this chapter prescribed, file the same keeping one copy as a permanent record. He shall thereupon issue a certificate of dissolution and a certified copy of such certificate attached to the other copy of said articles of liquidation,

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and deliver the same to the corporation or its representative who shall then cause the articles of liquidation and the certified copy of said certificate of dissolution attached thereto to be filed for record in the office of the recorder of deeds of the county or city in which the registered office of the corporation in this state is located.

"2. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease." (Emphasis ours.)

It would seem that the issue here is whether the fees prescribed in Section 351.125, RSMo 1949, and Section 351.135, RSMo 1949, are such fees as are contemplated in Section 351.480, supra.

Section 351.125, supra, reads:

"Every corporation required to register under the provisions of this chapter shall pay to the state a fee of five dollars for annual registration if it registers within thirty days from the first day of July, and any such corporation which registers on August first or during thirty days thereafter shall pay a fee of ten dollars, and any such corporation which registers on September first or during twenty-nine days thereafter shall pay a fee of twenty dollars, and any such corporation which registers October first or thirty days thereafter shall pay a fee of twenty-five dollars, and any such corporation which registers November first or twenty-nine days thereafter shall pay a fee of thirty dollars, and any such corporation which registers December first or thirty days thereafter shall pay a fee of thirty-five dollars for annual registration."

Section 351.135, supra, reads:

"Every corporation required to register under section 351.120 shall annually at the time of its registration as required in said section

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make and file with the secretary of state on a form to be supplied by the secretary of state, the affidavit required by section 416.200, RSMo 1949, and pay a fee of five dollars in connection with the filing of such affidavit."

It will be noted that Section 351.125, supra, requires the corporation to pay a five dollar fee for annual registration "if it registers," and that Section 351.135, supra, requires a corporation to file annually at the time of registration an anti-trust affidavit and pay a fee of five dollars "in connection with the filing of such affidavit." From the above it is clear that no obligation is incurred for the payment of these fees unless and until the corporation registers and files an anti-trust affidavit. Thus, it is clear that in the instant case these were not fees embraced by Section 351.480, supra, because, as we have seen, fees provided for by Section 351.125, supra, and Section 351.135, supra, are not due and owing unless the corporation registers and files the anti-trust affidavit, which was not done in the instant case.

We also note that the registration and anti-trust affidavits are required during the month of July, but if they are not filed on or before the 31st day of December, the penalty for failure to do so is involuntary dissolution. Section 351.525.

Section 351.520, entitled "Dissolution and retirement of corporation, conditions of," reads:

"No corporation organized under the laws of this state shall, after March twentieth, in any year, be permitted to dissolve by any method, provided by law, unless it shall be shown to the secretary of state that it has filed the reports called for in sections 147.010 to 147.110, RSMo 1949, and has paid to the state collector of revenue any tax due upon said report. When the dissolution is to be effected by a proceeding in court, the judgment of dissolution shall be conditioned upon and shall require the annual franchise tax report to be made and the tax to be paid before the same is effective. No corporation, not organized under the laws of this state and engaged in business in this

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state, shall, after March twentieth, in any year, be permitted to retire from this state by any method provided by law, unless it shall be shown to the secretary of state that it has filed the reports called for in sections 147.010 to 147.110, RSMo 1949, and shall have paid to the department of revenue any tax due upon said report."

It will be noted that the above section states that no corporation organized under the laws of this state shall, after March 20th in any year, be permitted to dissolve unless it shall be shown that it has filed the reports called for in Section 147.010 to Section 147.110 and paid any tax due thereon. These sections relate to corporation franchise tax. It is conceded that there has been compliance with these provisions of the law. We note also that failure to comply with Sections 351.525 and 416.200, RSMo 1949, will result in forfeiture of charter.

CONCLUSION

It is the opinion of this department that a corporation seeking dissolution under Section 351.460, RSMo 1949, may be permitted to dissolve without compliance with Sections 351.125 and 351.135, supra, if the corporation has not registered and made the affidavit required by these sections.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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