



STATE OF KANSAS

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June 13, 1978

ATTORNEY GENERAL OPINION NO. 78- 189

The Honorable Edward F. Reilly, Jr.
State Senator
430 Delaware
Leavenworth, Kansas 66048

Re: Corporations--Service of Process--Dissolved Corporations

Synopsis: Kansas law does not specify in what manner service of process may be made upon a dissolved corporation during the three-year period following dissolution during which its corporate existence is continued by K.S.A. 17-6807. Research discloses no reported decision of a Kansas court upon the question. In various jurisdictions, depending upon the facts and circumstances of each case, courts have upheld service of process upon officers, directors and agents of the former corporation, upon the secretary of state, or upon a person designated by statute as responsible for winding up the affairs of the corporation. Without reference to particular facts and circumstances, it is impossible to predict whether service upon a resident agent would be upheld, although the reported annotated cases do not reflect widespread support for such service. Corrective legislation is needed to specify the mode for service of process upon dissolved corporations.

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Dear Senator Reilly:

You advise that you have recently been contacted by a Leavenworth attorney who has raised the question whether, under Kansas law, a resident agent of a dissolved corporation or of a corporation

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the articles of which have been forfeited pursuant to K.S.A. 17-7510 is a proper party to accept service of process for that corporation.

K.S.A. 17-6807 provides in pertinent part thus:

"All corporations, whether they expire by their own limitation or are otherwise dissolved, including revocation or forfeiture of articles of incorporation pursuant to K.S.A. 1972 Supp. 17-6812 or 17-7510, shall be continued, nevertheless, for the term of three (3) years from such expiration or dissolution or for such longer period as the district court in its discretion shall direct, bodies corporate for the purpose of prosecuting and defending suits . . . by or against them"

Presumptively, the legislature intended that dissolved corporations should be liable to service of process. However, it has neglected to indicate how service should be made in such circumstances. You request my opinion on the question, in order that appropriate corrective legislation may be recommended.

An annotation on the question of service of process upon dissolved domestic corporations in the absence of express statutory direction appears at 75 A.L.R.2d 1399, following the reported opinion in *Railway Fuel Co. v. Ackerman*, 269 Ala. 460, 114 So.2d 142 (1959). That court summarized the divergent views taken by various courts on the question thus:

"Some courts have held that individuals who, because of their positions, were authorized to receive service on behalf of the corporation at the time of dissolution, continue as individuals to possess such authority in the absence of statutory provisions spelling out how process is to be served

Other courts have taken a contrary position and have held that service should be had on the individuals upon whom the applicable statutes have placed the responsibility of attending to the affairs of the dissolved corporation during the period of time in which it remains in existence for limited purposes."

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The court took the latter view, stating thus:

"The rules [relating to service of process] are designed to limit service to persons who could reasonably be expected to apprise the corporation of service and the pendency of the action. A former official or agent whose connection with and responsibility to a corporation have been severed by dissolution of the corporation does not, in our opinion, satisfy this requirement."

In the following annotation, the writer discusses a number of cases involving this question. Because of the varying facts and circumstances of each particular case, it would not be particularly helpful, in responding to your question, to discuss these cases at great length. In some instances, the courts have upheld service of process on the secretary of state where that official has been designated by statute to receive service of process upon corporations in certain circumstances. In others, such service has not been upheld. In addition, in other cases, the courts have upheld service upon particular officers, directors or agents of the corporation, depending upon their relationship to the subject matter of the suit, and also upon persons statutorily designated as responsible for winding up the affairs of the corporation.

Thus, depending upon the facts and circumstances of a particular case, the court might uphold service upon a dissolved corporation which was made upon the secretary of state, upon a director, officer or agent of the dissolved corporation, or upon a trustee or other person, if such there be, who is entrusted by statute with winding up the affairs of the dissolved corporation. From among these divergent points of view, we have virtually no basis upon which to conclude with any confidence that one particular form of service will be upheld in a particular case. Obviously, the practitioner is faced with an intractable problem in this circumstance, and corrective legislation is needed to define the persons or class of persons upon whom service may be made in such circumstances. I find no reported decision of any Kansas court upon the question.

Yours, truly,



CURT T. SCHNEIDER
Attorney General