

January 10, 1972

OPINION LETTER NO. 15
Answer by letter-Wood



Honorable J. Anthony Dill
Representative, District 44
8011 Grandvista Avenue
St. Louis, Missouri 63123

Dear Representative Dill:

You have asked for my legal opinion on the following questions:

- "1. Is an act of the legislature required to dissolve 'the Druids' Hall Association', a corporation created by a special act of the legislature and approved February 16, 1857, laws of 1857, page 639.
- "2. If an act of the legislature is required to dissolve this corporation created by special act of the legislature, should the dissolving act provide for the manner of distribution of remaining assets of such corporation or does the general law, such as the law of escheats, direct the manner of distribution of remaining assets?"

The Act of 1857 referred to is herein set out:

"Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1.--That Turner Maddox, John W. Colvin, Henry Bischoff, Frederick Spies, John F. Tuckman, John Ulbricht, George Hasfurther, Michael Ostertag, Henry Teustel, George Schoenhals,

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Charles F. Cady, Conrad Philips, John A. Kaltwasser, George P. Daub, John L. Link, Philip Stremmel, Charles P. Meissner, Oswald Benken-
dorf, Lewis Miller, John Keil, Nicholas Berg,
Julius Hennig, Casper Gellenbeck, George Moeler,
Edward E. Allen, Henry Spukler, George H. Senden
and Henry Kling, and their associates and suc-
cessors in office, shall be and they are hereby
created a body politic and corporate, by the
name and the style of 'The Druids' Hall Associa-
tion,' with a capital stock of fifty thousand
dollars, which may be increased at the will of
the stockholders, to any amount not exceeding
two hundred thousand dollars, in shares of
twenty dollars each; by which name they and
their successors shall have perpetual succes-
sion, and are made capable in law and equity
of acquiring and holding any and every kind
of property whatever, for the purpose of build-
ing a Druids' Hall in the city of St. Louis,
and the same to sell or otherwise dispose of;
of contracting and being contracted with, of
suing and being sued, of defending and being
defended against in all courts and places
whatever, in all manner of actions, and may
have a common seal, and the same to alter or
change at pleasure.

§ 2.--The above named persons, or any
three of them, shall have power to open books
for subscription of the said stock, in such
manner and at such time and places as they may
appoint, and to close the same; and the sub-
scribers shall meet at such time and place as
the above named persons, or any three of them,
shall appoint, by first giving notice of such
meeting in one or more newspapers in the city
of St. Louis, and choose sixteen directors,
one of whom shall be chosen President; and
said directors shall hold their offices until
their successors are elected and qualified ac-
cording to the by-laws of said association.

§ 3.--The affairs of said association shall
be managed by said directors, who shall be
chosen by the stockholders annually, in such
manner and at such times as the by-laws may
provide.

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§ 4.--Any grove, degree grove, chapter, grand grove, or other organization of regular Druids, shall have power to subscribe and hold stock in said association, which stock shall be represented by the chief officer of said grove, degree grove, chapter, grand grove, or other organization of regular Druids for the time being.

§ 5.--The stock of said association shall be considered personal property, and shall be transferable according to such rules and under such restrictions as the Board of Directors may by the by-laws direct; who may also, by their by-laws, prescribe what number of directors shall form a board competent to transact business of the association, prescribe what number of officers are necessary, their duties titles and salaries, and such other things as they may deem proper, always, however, subject the laws of this State.

§ 6.--The funds of the corporation hereby created are hereby exempted from taxation, and shall be expended in buying an adequate lot or piece of ground, and erecting thereon a building sufficient and commodious for the use of the United Ancient Order of Druids, in the city of St. Louis; which ground and building, while the same or any part thereof shall be occupied and used for the purpose herein mentioned, shall not be subject to taxation.

"This act shall take effect and be in force from and after its passage.

"Approved February 16, 1857."

The general law on dissolving corporations has been thus stated:

"A corporation may be wound up and dissolved either voluntarily or involuntarily. It is said by Blackstone (1 Bl Com 485) that 'a corporation may be dissolved: (1) By act of Parliament, which is boundless in its operations; (2) by the natural death of all its members, in case of an aggregate corporation; (3) by surrender of its franchises into the hands of the King, which is a kind of suicide; (4) by

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forfeiture of its charter, through negligence or abuse of its franchises; in which case the law judges that the body politic has broken the condition upon which it was incorporated, and thereupon the incorporation is void.' . . ." (19 Am.Jur.2d, Corporations, Section 1588, p. 954)

Your questions relate to the first situation described by Blackstone and it is to that which we will give primary consideration herein.

Blackstone's first situation does not completely obtain in this country, at least since the decision in The Trustees of Dartmouth College v. Woodward, 4 Wheat 518, 4 L.Ed. 629 (1819) giving to corporate charters the status of contracts, the obligations of which cannot be later impaired by the state (Article I, Section 10, Constitution of the United States). Therefore, unless the right of the state to dissolve a corporate charter is reserved, it cannot be subsequently dissolved through repeal of the charter. Graham v. Folsom, 200 U.S. 248, 50 L.Ed. 464, 469 (1906); Louisville Gas Co. v. Citizens Gas Light Co., 115 U.S. 683, 29 L.Ed. 510, 515 (1885); New Jersey v. Yard, 95 U.S. 104, 24 L.Ed. 352, 354 (1877). The charter granted to the Druids' Hall Association contains no reservation of the power of the state to later alter, amend, or repeal it. A general law in effect at the time this special charter was granted provided:

"Sec. 7 The charter of every corporation that shall hereafter be granted by the legislature, shall be subject to alteration, suspension, and repeal, in the discretion of the legislature." (RSMo 1845, p. 230, 232; 1855, p. 369, 371) (See State on inf. Dalton v. Holekamp Lumber Co., 331 S.W.2d 171, 177 (St.L.Ct.App. 1960) for an exposition of the subsequent history of this statute which today appears as Section 351.700, RSMo 1969)

The United States Supreme Court has recognized that a state may reserve through general law the power to amend, alter, or repeal special charters. City of Covington v. Commonwealth of Kentucky, 173 U.S. 231, 43 L.Ed. 679, 682 (1899). Our Supreme Court, on a number of occasions, has refused to read provisions of the general corporation law into special charters for charitable or educational purposes granted by the legislature prior to the adoption of the Constitution of 1865 (when the state's power to alter, amend, or repeal all corporate charters was reserved in the Constitution; Article VIII, Section 4, Constitution of Missouri, 1865).

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State ex rel. Banister v. Trustees of William Jewell College, 260 S.W.2d 479, 481-482 (Mo. banc 1953)

Trustees of William Jewell College v. Beavers, 171 S.W.2d 604, 608 (Mo. banc 1943)

State ex rel. Morris v. Board of Trustees of Westminster College, 74 S.W. 990, 991 (Mo. 1903)

State ex rel. Clover v. Ladies of the Sacred Heart, 12 S.W. 293 (Mo. 1889)

The rule has been otherwise as to special charters issued to business or public corporations during this period, whose charters have been held to include all provisions of general law existing at the time of the grant, including the reserved right of alteration, amendment, or repeal contained in the general corporation law (RSMo 1845, p. 230, Sec. 7).

State ex rel. Hines v. Cape Girardeau & Jackson Gravel Road Co., 105 S.W. 761 (Mo. Banc 1907)

Gregg v. Granby Mining & Smelting Co., 65 S.W. 312 (Mo. 1901)

Watson Seminary v. Pike County Court, 50 S.W. 880, 883 (Mo. 1899) (Public corporation)

We cannot determine from its charter alone the exact nature and character of the Druids' Hall Association, and particularly whether it was a charitable or educational organization, or a business corporation to be operated for the profit of its members. We do note a general law in effect at that time providing for the incorporation of benevolent associations, which associations were to be ". . . governed by the provisions of the act concerning corporations, except as herein otherwise limited." (RSMo 1855, Vol. 1, p. 379, 381). Evidently, the incorporators of the Druids' Hall Association did not desire a charter under either the general corporation law or the benevolent association law and chose instead the special charter granted to them by the legislature in 1857. Accordingly, we have some question as to whether the provisions of the general corporation law in effect when the special charter was granted to the Druids' Hall Association did apply to and become a part of such charter, so as to effect the necessary reservation by the state of the power to alter, amend, or repeal the association's charter. We are therefore hesitant to advise you that involuntary

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dissolution of the Druids' Hall Association through an act repealing its charter is an appropriate means of dissolution.

However, as already indicated, there are other methods of accomplishing dissolution:

". . . The duration of a corporation, though unlimited by its charter, and though it is given the capacity to have perpetual succession cannot be regarded as 'everlasting,' within the general and common meaning of that word. It may be dissolved and cease to exist for want of members, by voluntary surrender of franchises, forfeiture by misusers, etc. . . ." (State ex rel. Walker v. Payne, 31 S.W. 797, 798 (Mo. banc 1895))

The above, of course, restates the last three methods described by Blackstone for dissolving a corporation. Since you state that some of the members of the corporation are still alive, and since you do not indicate that there exists any violation of the corporate franchise which might justify an action in quo warranto, it would appear that voluntary surrender of the corporate charter by all living members is the best means of now dissolving the corporation.

As stated, we cannot determine from its charter alone if the Druids' Hall Association is a business corporation for profit, a religious or charitable association, or a corporation not for profit. This determination would necessarily have to be made on the basis of the corporation's actual activities and manner of operation. If, in fact, the corporation is a business corporation for profit, we believe it may accept the provisions of the General and Business Corporations Law in the manner set out in Section 351.025, RSMo. Dissolution of the corporation could be thereafter effected in the manner prescribed by this law (Sections 351.460, et seq., RSMo). If, in fact, the corporation is a corporation not for profit engaged in any of the purposes specified in Section 355.025, RSMo, we believe it may accept the provisions of the General Not For Profit Corporation Law in the manner set forth in Section 355.020, RSMo, and thereafter dissolve following the procedures directed by that law (Section 355.255, RSMo).

Yours very truly,

JOHN C. DANFORTH
Attorney General