

Opinion No. 53-5723

April 7, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. P. A. Quintana Assistant Chief Clerk, Corporation Department State
Corporation Commission Santa Fe, New Mexico

{*118} This is in answer to your request for an opinion from this office upon the question of whether or not a charitable and benevolent non-profit corporation can register in the office of the State Corporation Commission for a perpetual corporate existence.

Chancellor Kent in 2 Kent Com. 267, stated:

"It is sometimes said that a corporation is an immortal as well as an invisible and intangible being, that the immortality of a corporation means only its capacity to take in perpetual succession so long as the corporation exists. It is so far from being immortal, that it is well known that most of the private corporations recently created by statute are limited in duration to a few years. There are many corporate bodies that are without limitation, and, consequently, capable of continuing so long as a succession of individual members of the corporations remain and can be kept up."

A corporation being granted life by the act of a sovereign, that is by the act of the laws of the state wherein it is incorporated, nothing less than that power or the lapse of the period of life provided by the articles of incorporation or by the dissolution of the corporation by permission of the sovereignty can take that life away. **Sun River Stock and Land Corporation v. Montana Trust & Savings Bank, 262 Pac. 1039, 81 Mont. 222.**

Since the Legislature and the people of New Mexico by their Constitution and laws have spoken on this subject, a corporation exists only by virtue of such constitution and such legislation. Sec. 54-202 (1) N.M.S.A. 1941 Comp., as amended, grants the power to every corporation organized under the laws of the State of New Mexico to have a period of existence limited to one hundred years. Sec. 54-208 (6) N.M.S.A. 1941 Comp., as amended, requires that a corporation in its certificate of incorporation provide that the limitation of life shall not exceed one hundred years.

Secs. 54-1301 et seq., as amended, dealing with associations not for profit do not indicate that the Legislature intended that a corporation such as this should have a perpetual existence or should come within any exemption of Secs. 54-202 and 54-208, supra. Under Sec. 54-1312 (a) N.M.S.A. 1941 Comp., as amended, Sec. 1, Laws of 1943, Chapter 114, the Legislature provided a separate means for such a corporation to extend its corporate existence within eight years after expiration, allowing such extension for a period of not more than one hundred years from and after the expiration of its term of existence. This would indicate that the Legislature in respect to these

corporations still felt that no corporation under the laws of the State of New Mexico can provide for more than one hundred years' existence.

Sec. 54-1306 N.M.S.A., 1941 Comp., as amended, dealing with such religious, benevolent, etc., corporations states that they will make and sign a certificate setting forth the name of the proposed corporation, its objects, location and **term of existence**. This would indicate that it has a specific term of existence in conformity with the laws of the State of New Mexico. The fourth paragraph of this section requires {*119} interpretation in order to understand the legislative intent:

"Any person in whom shall be vested the legal title to the property of any church or religious society, in conformity with its constitution, canons, rites or regulations, and of any scientific research institution maintained solely for pure research and without hope of pecuniary gain or profit, may make and subscribe written articles of incorporation, and acknowledge the same, and file a duplicate of such articles for record in the office of the county clerk of each county in which any real property of such corporation is situated together with an impression of the seal which it shall adopt. **Such corporation sole shall be perpetual in existence** (underlining ours) and shall vest in the successors in office to the person so complying with the provisions hereof and title to all property vested in such corporation sole hereunder shall also vest in such successors in office."

The purpose of this paragraph of this section is to provide that no real property held by any person for or on behalf of such corporation shall be divested from such corporation by reason of the term of its existence. This particular provision of the law was written, it is felt, to assure non-profit charitable corporations the fact that their property or title thereto would not be divested or any other way affected by the terminability or limited term of existence of such corporation. There existed at one time some authority to the fact that corporations holding property could not take a fee simple due to the terminable nature of the entity, but this particular theory is no longer generally followed. See **19 CJS § 1088, pp. 630 and 631**.

It is therefore the opinion of this office that charitable and benevolent non-profit corporations are required to state in their articles of incorporation a term of existence not in excess of one hundred years.

By: William J. Torrington

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