

When so construed it is apparent that the legislature intended that the rights to permits to hunt, trap and fish in this state heretofore granted to soldiers, sailors, marines, nurses and women's auxiliary corps of the army, navy and marines was intended to be granted to all soldiers, sailors, marines, nurses and women's auxiliary corps of the army, navy and marines, who have served, who are now serving, or who may hereafter serve in World War II.

It is, therefore, my opinion that such members of such armed forces, aforesaid, who have served, who are now serving, or who may hereafter serve in World War II are entitled to such permits on application therefor, providing for a full period of six months next preceding the date of such application they were bona fide residents of the State of Indiana.

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**SECRETARY OF STATE: Corporations, authority of corporations whose charters have expired to reorganize under the 1929 Act.**

August 18, 1943.

Mr. Warren Day,  
Chief Corporation Counsel,  
Office of the Secretary of State,  
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion concerning the acceptance and filing by the Secretary of State of the Articles of Acceptance of the Indiana General Corporation Act of 1929 as amended of \_\_\_\_\_ Company, which seeks to accept the terms of said General Corporation Act of 1929 and reorganize pursuant to the provisions of Section 46 and Section 47 of said General Corporation Act as amended.

You state in your letter that this corporation was organized on June 21, 1902, pursuant to Chapter 127 of the Acts of 1901 entitled:

“An Act concerning the organization and perpetuity of voluntary associations, repealing all laws in conflict therewith, legalizing the organization of certain asso-

ciations organized under former laws, and declaring an emergency.”

Acts of 1901, page 289.

Section 1 of the above act, among other things, required the incorporators to state “the term of existence of such association, which, if organized for pecuniary profit, shall not exceed fifty (50) years.” In the Articles of Incorporation, complying with this provision of the law, the incorporators of the corporation under consideration stated in Article 5 of its Articles that “Said association shall continue in existence for the term of twenty years unless sooner dissolved.” The corporation was organized for pecuniary profit.

You state further that no attempt was made by said corporation to extend its life. However, it appears from the records in your office that the corporation did file annual reports for the years 1907 to 1934 inclusive and for the years 1936 and 1937.

The Articles of Acceptance which have been tendered to the Secretary of State for filing do not show when they were actually tendered. They were, however, dated June 26, 1943, from which it may be assumed, for the purposes of this opinion that that was the date when said Articles were tendered.

You ask to be advised as to whether it is permissible for the Secretary of State to accept the Articles of Acceptance referred to of the provisions of the Indiana General Corporation Act of 1929.

In the consideration of your question, it is of primary importance to determine what corporations may accept the reorganization provisions of the 1929 Act. As originally enacted by the General Assembly in 1929, Section 46 of said Act provided as follows:

“Any corporation heretofore organized under the laws of this state for any purpose or purposes for which a corporation might be organized under this act, *and existing at the time of the passage and approval of this act*, may reorganize under this act, and thereafter avail itself of the rights, privileges, immunities and franchises provided by this act, by comply-

ing with the provisions of this article." (Our emphasis.)

This section was amended in 1941 so as to read in part as follows:

"Any corporation heretofore organized under the laws of this state for any purpose or purposes for which a corporation might be organized under this act," (1929 act) "*and existing on March 16, 1929*, may accept the provisions of this act, and thereafter avail itself of the rights, privileges, immunities and franchises provided by this act, by complying with the provisions of this article." (Our emphasis.)

The section as amended in 1941 provided further that:

"Without limitation of the foregoing, such right to accept the provisions of this act shall extend to any corporation formed under this or any other general law of this state, for any purpose or purposes for which a corporation might be organized under this act, which corporation existed on or after March 16, 1929, and whose articles of incorporation fix a time of corporate existence which has terminated or shall hereafter terminate, *provided such corporation shall file its articles of acceptance within five years after such termination.*" (Our emphasis.)

I desire now to examine the status of the corporation under consideration so as to determine whether it comes within the applicable provisions of the above statute. As already indicated, the Articles of Incorporation of such corporation could have been so written as to provide for a fifty-year corporate existence. However, availing itself of the privilege granted by the Corporation Act under which it was incorporated, such corporation limited its existence to a period of twenty years. It was organized on June 21, 1902, and its term of existence therefore expired on June 21, 1922, unless further corporate action was taken to extend this period. As I understand from your letter, no such action was taken excepting the filing of annual reports as indicated earlier in this letter. I find

also that there was no provision in the Act under which the corporation was organized which would authorize the extension of the term of such corporation even for the purpose of defending suits to which such company was a party and to enable such corporation to settle and dispose of its property in the course of the ordinary dissolution. However, I do find that there was in force and effect a general provision, which I think would be applicable to this corporation under consideration, which authorized a continuation for three additional years for the purpose of settling its affairs. That provision is Section 6 of Chapter 24 of the Revised Statutes of 1852, the same being entitled:

“An Act establishing general provisions respecting corporations.”

Section 6 of this Act provides as follows:

“All corporations whose charters shall expire by limitation, forfeiture, or otherwise, shall, nevertheless, be continued bodies corporate for three years after the time they would have been so dissolved, for the purpose of prosecuting and defending suits to which they are a party, and to enable them to settle, dispose of, and convey their property, and divide the capital-stock, but not to continue the business for which such corporations were established.”

However, with this extended period added, the existence of the corporation under consideration would expire on June 21, 1925. The simple application of these facts to the original provision of Section 46 of the Indiana General Corporation Act of 1929 fails to meet with one of the conditions of such reorganization, to wit, the condition that such corporation is “existing at the time of the passage and approval of this Act,” because, as I have shown and shall hereafter show, there was no existence of such corporation within the meaning of the 1929 Act later than June 21, 1925, at the utmost. The same is true with respect to Section 46 as later amended, because, even in the amended section, it was required that such corporation seeking to reorganize must have been in existence as a corporation on March 16, 1929. Said amended

section further provided that the Articles of Acceptance must be filed within five years after the termination of the existence of such corporation, whereas in the case under consideration the existence of the corporation was terminated approximately eighteen years prior to the time when the Articles of Reorganization were tendered.

I am aware that it will probably be contended that the corporation whose acceptance of the 1929 Act is under consideration was a *de facto* corporation all of the time by virtue of certain courses of business which the corporation followed. I do not think, however, that the language of Section 46, *supra*, "and existing at the time of the passage and approval of this act" refers to a *de facto* existence after the term had actually expired by limitation. Moreover, the great weight of authority, in my opinion, does not admit of the creation of a *de facto* corporation to extend charter rights of the corporation beyond the fixed term as set up in the Articles, and such term as may be given for the purpose of closing the business of such a corporation. In this regard, I call attention first of all to Section 263 of *Thompson on Corporations*, 3rd Edition, where the author states the rule as follows:

"The courts are not entirely agreed as to whether a corporation may exist *de facto* after the expiration of its charter. In determining this question, however, reference must be had to the statutes under which the various corporations have been organized. It will be observed that some of these extend the life of the corporation for certain purposes; and in such case no such question would be raised. But where a statute plainly provides that the existence of corporations shall be for a specified period, then, under the weight of authority, such corporation can not exist *de facto* after the expiration of such period. Where the limited time of the existence of a corporation has expired the corporation is *de facto* dead. The governing principle is that upon the expiration of the term limited by the charter, the dissolution of the corporation is complete. The dissolution in such case is pronounced by the act of the legislature itself; no judicial determination of such fact is required. Following this doctrine the principle stated is that a corporation whose existence has

expired by operation of law, is not a de facto corporation. This is also evident on the theory that there can be no corporation de facto where there can be none de jure."

See also *Fletcher's Cyclopaedia of Corporations*, permanent edition, Volume 8, Chapter 45, Section 3842 which reads in part as follows:

"The general rule is that there is no de facto corporation after the fixed period of corporate existence has expired, at any event where there is no certificate of renewal nor any bona fide attempt in regard thereto. A corporation is dissolved and ceases to exist when its charter expires, unless there is some statutory provision to the contrary, since there is no longer any law under which it can exist and therefore it cannot, after expiration of its charter, be a corporation either de jure or de facto; and thereafter its right to exercise corporate powers, including the right to sue as a corporation, may be questioned collaterally."

The author recognizes that there are some holdings contrary to the statement just made, but I find that the Indiana rule follows the statement above quoted from the text. See *Clark v. American Cannel Coal Co.*, 165 Ind. 213, where the Court said on page 217:

"If the law under which a corporation is organized, or the special act creating the corporation, fixes a definite time when its corporate life must end, it is evident that when that date is reached, said corporation is *ipso facto* dissolved without any direct action on the part of the state or its members. And no corporate powers can thereafter be exercised by it except such as are given it by statute for the purpose of winding up its affairs, which in this State is limited to three years after the dissolution."

See also 47 A. L. R., 1297, where it is said that:

"One of the classes of cases discussed in this monograph is illustrative of the doctrine that, apart from

the operation of a modifying statute, a corporation becomes absolutely dissolved and defunct, without any judicial pronouncement to that effect, when the period of its existence as defined by the statute under which it was organized, or by its charter or Articles of Association, has expired."

See also *Sturges v. Vanderbilt*, 73 N. Y. 384; *Meramec Spring Park Company v. Gibson*, 188 S. W. 179.

As further bearing on the subject indicating corporate existence ceases upon the termination of the charter and the extended period allowed for closing business, note again Section 6 of the 1852 Act continuing corporations for the purpose of closing their business where it is said that such extended period is not for the purpose of continuing the business for which such corporations were established. I think it is clear that within the meaning of the terms of Sections 46 and 47 of the Indiana General Corporation Act of 1929 as amended, the filing of the Articles of Acceptance referred to in your letter would not operate to continue said corporation even if accepted and filed, and, moreover, that the Secretary of State has no authority to receive such papers for filing under the conditions set out in your letter.

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**BUREAU OF MOTOR VEHICLES: License taxes payable in case of school buses where same vehicle is also operated for hire in transportation of others.**

August 18, 1943.

Hon. R. Lowell McDaniel, Director,  
Bureau of Motor Vehicles.  
State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of August 9, 1943, received as follows:

"In view of transportation difficulties which exist in certain centers of Indiana, school busses are being used for the transportation of school children and in