



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 12, 1995

The Honorable Clyde Smith  
Mayor, Town of Monetta  
Post Office Box 8  
Monetta, South Carolina 29105

RE: Informal Opinion

Dear Mayor Smith:

By your letter of May 24, 1995, to Attorney General Condon, you sought an opinion as to the legal procedure involved in dissolving a nonprofit organization. You advised that the Monetta Community Volunteer Rescue Squad has been discontinued, as Aiken and Saluda counties have taken over its ambulance functions and the ambulance owned by the corporation has been sold. Distribution of the assets of the corporation and any time limit in which to accomplish dissolution were also among your questions.

Upon checking with the Secretary of State's office, I learned that the Monetta Community Volunteer Rescue Squad is an eleemosynary corporation in good standing. You have advised that the corporation apparently does not have tax exempt status through the Internal Revenue Service. Thus, the question becomes generally how to dissolve a nonprofit corporation and what distribution may be made of its assets.

I am enclosing a copy of the relevant portions of Article 14, Chapter 31, Title 33 of the South Carolina Code of Laws (1994 Cum. Supp.), a portion of the South Carolina Nonprofit Corporation Act of 1994, as to dissolution of such corporations. Because the corporation has been in existence a number of years, most probably §33-31-1401 would not be applicable. Section 33-31-1402 provides for dissolution by directors, members, and third persons; most probably the corporation would follow these steps. Exactly which procedure would be followed is unknown to this Office, as such would depend on whether the corporation has no members or no members entitled to vote on dissolution, for

The Honorable Clyde Smith

Page 2

June 12, 1995

example. Bylaws and articles of incorporation will also require consideration as to the required vote, as well. Certain notice is required by this statute, as provided in the statute.

If the corporation is a "public benefit corporation" as that term is defined in §33-31-140(30) (copy enclosed), §33-31-1403 requires that certain notice of dissolution be provided to the Attorney General; that assets not be transferred or conveyed by a public benefit corporation as specified in the statute; and that notice of conveyance of assets be provided to the Attorney General as specified therein.

Articles of dissolution must be drafted and delivered to the Secretary of State. Section 33-31-1404 sets forth the provisions which must be covered in the articles of dissolution. The effect of dissolution is addressed by §33-31-1406; of particular interest to you will be subsections (a)(5) and (a)(6), concerning transferring the assets. There are other statutes in that article, particularly concerning claims, known and unknown, against a dissolved corporation; you should look over the article carefully, to be certain that all applicable statutes are complied with.

You had asked for a step by step procedure to effect dissolution. Because some of the information which will be taken into account in determining certain procedures is unknown to this Office, it is not possible to provide more than a general comment on the applicable statutes. Due to the complex nature of corporate law, especially with the new act relative to nonprofit corporations, the corporation would be well-advised to seek advice from private legal counsel to be certain that all statutes have been complied with and that distribution of assets is made according to law.

One caveat is in order. You have advised that the corporation did not have tax exempt status pursuant to Internal Revenue Service regulations. I am assuming this to be true for purposes of this informal opinion. If such tax exempt status should exist, the application for such status should be consulted in the event that representations were made to the Internal Revenue Service concerning the distribution of assets upon dissolution. Such representations should be complied with, if they exist, to avoid difficulty with the Internal Revenue Service. Additionally, the articles of incorporation and bylaws should be consulted, in the event representations were made therein as to distribution of assets upon dissolution of the corporation.

You also inquired as to any time limit for dissolution. Upon discussing the matter with you, I learned that your concern is actually that, subsequent to the sale of the ambulance by the corporation, the corporation has funds in a bank account and wishes to ensure that the funds do not become abandoned property while dissolution of the corporation is underway. In that regard, I am enclosing a copy of §27-18-70, which

The Honorable Clyde Smith

Page 3

June 12, 1995

statute will give you guidance on what steps may be taken to prevent bank accounts as described therein from becoming abandoned. You will see that abandonment for five years will be necessary before steps would be taken to have the property escheat to the State of South Carolina.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it is as responsive to your inquiry as is possible under the circumstances.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General

Enclosures