

The State of South Carolina



Office of the Attorney General

*Opinion No 87-12
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February 2, 1987

The Honorable John H. Waller, Jr.
Judge, Twelfth Judicial Circuit
Post Office Box 1059
Marion, South Carolina 29571

Dear Judge Waller:

Thank you for your recent letter wherein you requested the opinion of this Office clarifying the South Carolina law relative to service of process upon a dissolved domestic corporation. I advise that at the outset that there is no express statutory provision providing for service of process upon a dissolved domestic corporation nor is there any South Carolina decisional law resolving the question, and thus any conclusions by this Office in this area are guarded. Nevertheless, the law elsewhere generally is that in the absence of an express statutory provision providing for service of process upon a dissolved corporation, service may be made upon the corporation by serving those persons who prior to the forfeiture of the charter are designated for that purpose. It is our opinion that the South Carolina courts would follow this general law.

It is provided generally:

Service of process on dissolved corporations, where provision is made for actions after dissolution, may generally be made in the same manner and on the same persons as if dissolution had not occurred or on such persons as the statute may designate.

19 C.J.S. Corporations § 1776; see also, 19 Am.Jur.2d Corporations § 2903. Decisions in other jurisdictions following this general rule ordinarily reason that the State has provided for survival of a remedy against the corporation after dissolution, and accordingly the corporate entity continues its legal

existence at least for that limited purpose. Thus, the Courts have conclude that service upon the corporation in the manner provided by law for service prior to dissolution is the accepted procedure. See, e.g., Vogel v. Missouri Valley Steel, Inc., 625 P.2d 1123 (Kan., 1981); Neis v. Heinsohn/Phoenix, Inc., 628 P.2d 979 (Az., 1981). Additionally, at least two Courts have expressly recognized the validity of substituted service upon the Secretary of State where the registered agent of a dissolved corporation cannot be located. Sisk v. Old Hickory Motor Freight, 24 S.E.2d 488 (N.C., 1943); Westphall v. Trailers, Campers, Campgrounds Inc., 392 N.E.2d 741 (Ill., 1979).

As additional comment, I advise that earlier decisions in Minnesota concluded that service upon the Secretary of State may be the only accepted procedure for service upon the dissolved corporation. See, Korpjo's v. Bridgeman Creameries Inc., 79 N.W.2d 921 (Minn., 1956); Henderson v. Northwestern Heating Engineers, Inc., 144 N.W.2d 46 (Minn., 1966). The reasoning in these Minnesota cases appears to have been rejected by other Courts. Incidentally, the Minnesota Court does suggest that the trustees would also be the proper recipients of process although rejecting other corporate officials.

Moreover, at least one Court has agreed that service upon the corporation officials charged with attending the affairs of the dissolved corporation during the period of time in which the dissolved corporation remains in the existence for limited purposes may be the only acceptable procedure for service of process upon a dissolved corporation. Railway Fuel Company v. Ackerman, 114 So.2d 142 (Ala., 1959). The Alabama Court acknowledged however that its holding was not generally favored. I refer you to Vogel v. Missouri Valley Steel, Inc., *supra*, wherein the Kansas Court expressly rejects the Alabama Court's reasoning.

Thus, while there is some support for the proposition that service upon a dissolved corporation may only be made upon the liquidating directors or trustees, the more widely accepted and approved rule is that in the absence of express provision, service of process upon a dissolved corporation is made in the same manner as service upon the corporation if dissolution has not occurred.

South Carolina law very liberally provides for the survival of claims against a dissolved corporation¹; however, the South

¹ Section 33-21-20 of the amended Code provides in part:
...the dissolution of a corporation,...shall not take away or impair any remedy available to or against such corporation...for any right or claim existing, or any liability incurred. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.

Carolina law does not expressly provide for service of process upon a dissolved corporation. In this very limited context, South Carolina law provides for the indefinite continuance of the corporate entity. See, e.g., Ocean Forest Company v. Woodside, 184 S.C. 428, 192 S.E. 413 (1936).

South Carolina provides for service of process upon a domestic corporation pursuant to § 15-9-210 of the amended Code and S.C.R.Civ.Pro., Rule 4(d)(3). § 15-9-210 provides for service upon the registered agent of the corporation and in the event that the corporation has failed to "appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office" substitute service upon a domestic corporation may be made by service upon the Secretary of State. § 15-9-210(b). Of course, substitute service pursuant to this provision is not authorized except where the statutory requirements are met. Consistent with the authorities cited herein, we believe that service upon a dissolved corporation may be effected upon the Secretary of State pursuant to the provisions of § 15-9-210(b) in those limited situations where the registered agent is unavailable or there has been a failure to maintain or appoint a registered agent.

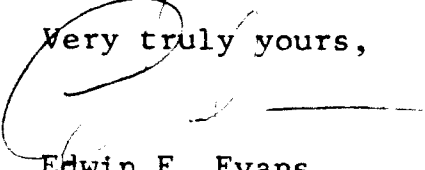
Rule 4(d)(3) additionally provides for service of process upon a corporation by delivering a copy of the process "to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process" on behalf of a corporation. Under this rule of civil procedure, we believe service upon a dissolved corporation can be effected by serving the liquidating trustees (former directors) of the dissolved corporation. § 33-21-220(b) of the amended Code provides that the directors of a dissolved corporation shall serve as liquidating trustees of the corporation.

We reiterate that in the absence of an express statutory provision providing for service upon the dissolved corporation and in the absence of any guiding precedent by the Courts of this State, any conclusion in this area is not free from doubt. We further emphasize that we do not herein comment on the authority of the trial judge to refuse to enter a default judgment where the judge believes that the method chosen for service of process upon a dissolved corporation did not or was not likely to apprise the dissolved corporation of the claim pending against it and thus we do not herein conclude that the Court could not direct that service be accomplished in some alternate manner. It is our opinion, however, that service of process upon a dissolved corporation in South Carolina can be effected by following the procedures established for service upon a corporation prior to its dissolution. In that regard, we advise that substitute service upon the Secretary of State pursuant to § 15-9-210(b), in an appropriate circumstance, may effect service upon a dissolved domestic corporation.

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Please call if we may further discuss this matter.

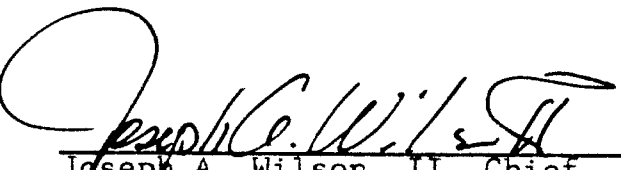
Very truly yours,


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