

**OPINION
65-65**

April 26, 1965 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Corporations - Life Insurance Company - Renewal
of Corporate Existence

This is in response to your letter in which you ask for an opinion as to whether or not a life insurance company may renew its corporate existence for a period greater than the original limitation of thirty years.

The articles of incorporation as pertaining to life insurance companies are governed by the provisions of section 26-08-05(4), as amended, of the North Dakota Century Code, which as is material here provides as follows:

"ARTICLES OF INCORPORATION - CONTENTS - FILING - NAME TO BE USED BY COMPANY. The articles of incorporation of a corporation organized under the provisions of this chapter shall set forth, in addition to what is required to be set forth under the general law governing profit corporations, the following information: * * *."

4. The period, not exceeding thirty years, for which the company is incorporated; * * *."

In 1957 the legislature enacted chapters 102 and 103 pertaining to the North Dakota Business Corporation Act and special corporations, respectively.

Under chapter 102, section 49, section 10-19-53 was created which, amongst other things, permits corporations to have a perpetual existence. This same chapter revised the corporation laws of the state of North Dakota. In the absence of any other legislation, it could be strongly argued that all corporations, after the effective date of chapter 102, could have a perpetual existence. However, in the enactment of chapter 103 of the 1957 Session Laws pertaining to special corporations, section 26-08-05 was amended and reenacted retaining the same limitation of thirty years.

The provisions of chapter 102 which are now found in section 10-19-53 of the North Dakota Century Code are provisions of general application, whereas the provisions of chapter 103, section 7 thereof, which amends section 26-08-05, are special in nature. These provisions are in apparent conflict. Pursuant to the provisions of section 1-02-07, special provisions prevail over general provisions where there is an irreconcilable conflict. Consequently, the provision of section 26-08-05, as amended by chapter 103, being a special provision would prevail over the general provision.

It is therefore our opinion that a life insurance company may renew its corporate existence for a period of thirty years only, and may not amend its corporate existence to a perpetual basis.

The inquiry suggests an erroneous concept as to the responsibility of the secretary of state to determine whether or not the substance as distinguished from form of the instrument is legal or valid. The statute in certain instances places a duty of responsibility upon certain officials to approve the instruments before they become valid and may be filed. As pertaining to the corporation in question, the statutes do not impose such duty upon the secretary of state. The filing is merely an act of recording and not an act of granting powers to the corporation. Filing in itself does not validate the substances of the instrument if it is not valid otherwise.

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