

Corporations, defense of lawsuit by trustee

Number: INFORMAL

Date: July 24, 1996

The Honorable John Ostalkiewicz
Senator, District 12
6000 South Rio Grande Avenue, Suite 101
Orlando, Florida 32809

Dear Senator Ostalkiewicz:

Thank you for considering this office as a source for assistance regarding the interpretation of section 607.1406, Florida Statutes, and the authority of a trustee for a dissolved corporation to defend the dissolved corporation in a lawsuit. You state that one of your constituents, who is a trustee for a dissolved corporation, is attempting to represent the corporation in a lawsuit filed against the corporation after its dissolution but "has been denied the right to do so." Attorney General Butterworth has asked me to respond to your letter.

Section 607.1406, Florida Statutes, provides for the disposition of known claims against a dissolved corporation. The statute authorizes a dissolved corporation, or successor entity, to dispose of such claims by following the procedures set forth in subsections (2), (3) and (4) of the statute.[1] A successor entity is specifically defined for purposes of the statute to include:

"any trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exist solely for the purpose of prosecuting and defending suits by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized."[2]

This office is not aware of how the trustee was appointed and what powers and authority was transferred or granted to the trustee at that time.[3] Section 607.1406, Florida Statutes, permits a trust to settle the claims of a dissolved corporation as prescribed therein provided that the trust exists solely for the purposes specified therein and not for the purpose of continuing the business for which the dissolved corporation was organized. Although the statute permits a trust to settle the claims of a dissolved corporation, it does not address the authority of a trust or trustee to proceed in court without legal counsel.

It appears from your letter that the courts have already ruled on this issue. Your constituent has also contacted this office and advised this office of the court order denying her the right to represent the corporation before the court without a lawyer. It also appears from the constituent's letter that an appeal of the order was unsuccessful. Thus, this issue has been resolved in this case by the courts. In order to avoid an intrusion into the province of the judiciary, this office

must defer to the court's decision and refrain from further commenting on this issue.

I trust you will understand that the inability of this office to comment upon this matter stems from constitutional and statutory constraints and not from a lack of concern.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] Section 607.1406(1), Fla. Stat.

[2] Section 607.1406(15), Fla. Stat.

[3] Section 607.1405(5), Fla. Stat., for example, provides that for purposes of s. 607.1405, the circuit court may appoint a trustee for any property owned or acquired by the corporation who may engage in any act permitted under s. 607.1405(1) if any director or officer of the dissolved corporation is unwilling or unable to serve or cannot be located.