

Corporations, Term of Existence Of.

Under the existing laws of Montana, a corporation may incorporate for a term not exceeding forty years. Section 411, Civil Code, supersedes Section 403 and has not been repealed or modified and is controlling on the subject.

Helena, Montana, August 17, 1905.

Hon. A. N. Yoder, Secretary of State, Helena, Montana.

Dear Sir:—You have asked an opinion from this office upon the following question, namely: What is the extreme limit for which a corporation can be incorporated under our present law?

In replying to your question I shall first make reference to the various provisions of the law bearing upon the subject, so that you will understand the apparent conflict in the law and the controlling provisions.

Section 403 is a code provision, adopted by the legislature at the time of the adoption of the codes reported by the code commission in 1895. Subdivision 4 thereof reads as follows: "The term for which it is to exist, not exceeding twenty years." Thus, by this subdivision the term of existence of a corporation is limited to twenty years, unless this provision has been superseded, modified or amended.

Section 411, of the same code, which is a re-inactment of "an act to amend Sections 446, 467, 468 and 469, of Chapter 25, Fifth Division of the Compiled Statutes of Montana of 1887, in relation to the term of existence of corporations" approved March 2, 1893, provides that at any time hereafter any three or more persons who may desire to form a company for the purposes therein mentioned, may make and file a certificate in writing in which shall be stated, among other things, the term of corporate existence, not exceeding forty years." And Chapter 102, laws 1905, purporting to amend said Sections 403 and 411, does not amend or affect either thereof so far as the tenure of existence of the corporation is concerned. However, it is provided by Section 2 of said act that at any time hereafter any three or more persons who may desire to form a company for any of the purposes for which private corporations may be formed, as set forth in Section 393 of this code, must prepare, sign, acknowledge and file articles of incorporation in the form and manner provided by Article I, Chapter I, Part IV of the Civil Code, and as Sections 403 and 411 of the Civil Code both form a part of Article I, Chapter I, Part IV, Civil Code, it will be necessary to give them consideration and determine which one is controlling in determining the tenure of existence of corporations under our present law, and Chapter 102, Laws of 1905, should be eliminated from consideration in this connection.

Section 4672, Civil Code, provides that "No statute, law, or rule, is continued in force because it is consistent with the provisions of this

code on the same subject; but in all cases provided for by this code, all statutes, laws, and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed or abrogated."

Section 5183, Political Code, provides "that all acts and parts of acts enumerated in this act are, and the same are hereby declared to be, parts of the political code, the civil code, the code of civil procedure, and the penal code respectively," etc., And Section 5184 provides, "If any of the acts or parts of acts herein enumerated are in conflict with, or are inconsistent with, any of the provisions of the said codes enumerated in Section 5183, of this act, or any of them, the acts or parts of acts herein enumerated are to be considered and construed as amendments to the respective code or codes, whose provisions they are in conflict with, or are inconsistent with, it being intended hereby that all of the acts or parts of acts herein enumerated shall be the law of the state of Montana, upon the respective subjects, so far as they are inconsistent with the provisions of the said codes, or any of them, except as herein provided."

By the direct provisions of Section 5184 the legislative assembly of 1895, at the time of the adoption of the codes, expressly reenacted "an act to amend Sections 446, 467, 468 and 469, of Chapter 25 of the Fifth Division of the Compiled Statutes of Montana of 1887, in relation to the term of existence of corporations," approved March 2, 1893, which now appears as Section 411, Civil Code .

Therefore, the legislature of 1895, having by act expressly reenacted and continued in force as the law of the State of Montana said act of March 2, 1893, (Sec. 411, Civil Code) and Section 403 being a code provision, in form and substance as reported by the code commission and in conflict with such reenactment of said act of March 2, 1893, by the legislature of 1895 upon this subject, said reenactment controls and is the law and Section 403, of the code, so far as it relates to the duration of existence of corporations, is superseded by said Section 411.

Again, were we to consider Section 411 as a part of the adopted code, and, therefore, in the same category as Section 403, the rule of construction laid down in Section 5165 of the Political Code would have to be applied, and as a result the same conclusion would be reached. Section 5165, reads as follows: "If conflicting provisions are found in different sections of the same chapter or article, the provisions of the section last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter or article."

Respectfully submitted,

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