

**Banks—Number of Directors of—Change of at Annual Meeting—Requisites of.**

Section 6033 of the Revised Codes of 1921 held to supplant and repeal Section 6026 as to the method and procedure to be followed in changing the number of trustees or directors of a banking corporation.

The notice required by Section 6033 must be given, and the procedure required by Sections 6033 and 6034 of the Revised Codes of 1921 must be complied with.

L. Q. Skelton, Esq.,  
Superintendent of Banks,  
Helena, Montana.

My dear Mr. Skelton:

You have inquired whether banks may change the number of directors at the annual meetings without publication of notice as provided by Section 13 of Chapter 89 of the Laws of 1915, or whether they must comply with the provisions of Chapter 148 of the Laws of 1917, requiring notice of meeting to be given and a favorable vote of two-thirds of all the stock in order to effect such change.

The above references are now Sections 6026 and 6033 of the Revised Codes of 1921. Your inquiry presents the question whether Section 6026 is repealed or modified by the provisions of Section 6033. Section 6026 reads as follows:

"The number of directors may be increased or decreased at any annual meeting of the stockholders, or any special meeting thereof called for such purpose, by a resolution passed by a majority vote of the stock represented at such meeting, but such resolution shall not become effective until authenticated copies thereof are filed with the superintendent of banks, the secretary of state, and the county clerk and recorder of the county in which is located the bank."

Section 6033 reads as follows:

"Whenever any bank shall decide to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for changing its corporate name, or for changing its principal place of business, or increasing or diminishing the number of its trustees or directors, it shall be the duties of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence at least six weeks previous to the day of meeting, specifying the object of meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, or the name to which it is proposed that the bank shall be changed, or to the new location or place to which the principal place of business shall be changed, and the number to which it is proposed to increase or diminish its trustees or directors, and a vote of at least two-thirds of all of the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock, or to change its principal place of business, or to increase or diminish the number of its trustees or directors."

The requirements of Section 6033 that the change in the number of trustees cannot be effected, except by a vote of two-thirds of the shares of stock, is entirely inconsistent with the provisions of Section 6026, authorizing such change by a vote of the majority of the stock represented at the annual meeting.

While repeals by implication are not favored, when statutes are so inconsistent that both cannot stand, the later will be held to have repealed the earlier.

State ex rel. Wynne v. Quinn, 40 Mont. 472;  
Proctor v. Cascade County, 20 Mont. 315;  
Congdon v. Butte Ry. Co., 17 Mont. 481;  
State ex rel. Hay v. Hindson, 40 Mont. 353;  
State ex rel. Metcalf v. Wileman, 49 Mont. 436.

While the first sentence of Section 6033 (Ch. 148, Laws of 1917) might lead to the inference that the Legislature intended to legislate only with reference to called meetings, the later provision of the section and the other provisions of the chapter require the opposite conclusion. For the language "a vote of at least two-thirds of all the shares of stock shall be necessary \* \* \* to increase or diminish the number of its trustees or directors" is evidently a general provision, applicable to changes in all cases. This is supported by the title of the Act, which is "An Act Regulating the Business of Banking," etc.

Any other conclusion than that 6033 provides an exclusive method and procedure for changing the number of trustees or directors would permit changes to be made by a bare majority of the stock represented in one case, while two-thirds of all the stock would be required in another, and in that case if a called meeting immediately before the annual meeting should, by a two-thirds vote, establish a certain number of directors, this could be undone by a mere majority at the following annual meeting. This could scarcely have been the intention of the Legislature, and the language of the Act as a whole so indicates.

It is, therefore, my opinion that Section 6033 of the Revised Codes of 1921 supplants and repeals Section 6026, as to the method and procedure to be followed in changing the number of trustees or directors of a banking corporation, and that the notice required by the latter section must be given, and the procedure required by Sections 6033 and 6034 of the Revised Codes of 1921 must be complied with.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.