

Foreign Corporations—Fees to be Charged on Filing Articles of Incorporation or Certificate of Increase of Capital Stock.

The rates prescribed by Section 145 of the Revised Codes of 1921 are to be charged to both domestic and foreign corporations, but in determining the proportion of the capital stock upon which this charge is to be made against foreign corporations Chapter 37 of the Laws of 1915 is controlling.

C. T. Stewart, Esq.,
Secretary of State,
Helena, Montana.

My dear Mr. Stewart:

You have requested my further opinion as to what fees you are authorized to collect from foreign corporations on filing their articles of incorporation, or certificate of increase of capital stock, in this State.

You have called attention to the fact that Chapter 37 of the Laws of 1915 provides for a minimum filing fee of \$20, while Section 145 of the Revised Codes of 1921 (Chap. 91 of the Laws of 1921) provides

for a minimum filing fee of \$50; also, that the charge per \$1000 of capital stock provided for by Chapter 91 is double the charge provided in Chapter 37. You wish to know whether you are confined to the fee of \$20, or whether you may charge \$50 as a minimum fee.

You have also called attention to the fact that, if the fees are collected under Chapter 37 for foreign corporations, domestic corporations will pay double these fees if collected under the provisions of Chapter 91. Chapter 91, being a later enactment than Chapter 37, would, in so far as it is in conflict with Chapter 37 and not in conflict with the opinion in the case of *J. I. Case Threshing Machine Co. v. Stewart*, 60 Mont. 380, 199 Pac. 909, repeal the former Act by implication.

This brings us to the question of what charge should be made per \$1000 on the capital stock since Chapter 91 doubles the rate prescribed in Chapter 37. To charge the rate prescribed by the latter chapter to foreign corporations, while charging double that amount to domestic corporations for filing their articles of incorporation or certificates of increase of their capital stock, would violate the provisions of Section 11 of Article XV of the Constitution, at least, so far as the domestic corporation is concerned. This section, in part, provides:

"And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state."

In the opinion of this office to which you refer, it was held that the clause repealing Chapter 37, contained in Chapter 91, was ineffective. However, the whole of Chapter 91 is not unconstitutional. The rate per \$1000 charged by that chapter has nothing to do with the question of its unconstitutionality and must still control Chapter 37 in that regard.

A repealing clause in a statute, of which a part is unconstitutional, is applicable only to laws inconsistent with the operative provision of the act.

People v. Meschling, 187 N. Y. 8, 10 Ann. Cas. 101, 10 L. R. A. (n. s.) 625;
State v. Blend, 121 Ind. 514, 23 N. E. 511, 16 A. S. R. 411;
Fisher v. Brayton, 145 Ind. 71, 32 L. R. A. 578.

If, where the unconstitutional provision of the statute is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained.

Dunn v. City of Great Falls, 13 Mont. 58, 31 Pac. 1017;
Hill v. Rae, 52 Mont. 378, 158 Pac. 826;
State ex rel. Evans v. Stewart, 53 Mont. 18.

The conclusion is that the rates prescribed by Chapter 91 (Sec. 145 Revised Codes of 1921) are still to be charged both domestic and foreign corporations, but in determining the proportion of their capital stock upon which this charge is to be made as regards foreign corporations, then or thereafter to be represented by its property or business in this State, you should look to the provisions of Chapter 37, Laws of 1915.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.