

**Foreign Corporations — Decrease in Capital Stock —  
Whether Constitutes the Alteration or Amendment of the  
Articles—Filing of Amendment of Articles.**

A decrease in the capital stock of a foreign corporation is an alteration or amendment of the articles of incorporation contemplated by Chapter 264 of the Laws of 1921.

A duly authenticated copy of such amendment or alteration should be filed in the office of the Secretary of State after its adoption by the corporation, and a certificate of decrease certified to by the Secretary of State of the domicile of the corporation is not sufficient.

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

My dear Mr. Stewart:

You have requested an opinion as to whether, upon the decrease of the capital stock of a foreign corporation, you should require a certified copy of the alteration or amendment decreasing the amount of the capital stock, or a certified copy of the certificate of the decrease issued by the State in which such corporation is incorporated.

Subdivision 5 of Section 4413, Revised Codes of 1907, as amended by Chapter 264 of the Laws of 1921, is, in part, as follows:

“In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing business in this State, or of increasing its capital stock, or of continuing its corporate existence, it must within thirty days after the same is adopted by the corporation file a duly authenticated copy of such amendment or alteration or certificate of increase of capital stock, or of continuance of corporate existence in the office of the Secretary of State and in the office of the County Clerk of the County where it intends to carry on business; \* \* \*”

The only question, it appears to me, is whether a decrease of capital stock is to be considered an amendment or alteration of the articles of incorporation so as to come within the above statute. It has been held in at least two instances that an increase of capital stock is an amendment to the articles of incorporation.

State v. Northern Pacific Ry. Co. (Wis.) 147 N.W. 219;  
State v. Railroad Commission (Wis.) 117 N.W. 846.

I can see no reason for distinction between an increase and a decrease of capital stock as far as the question of amendment is concerned, but while the statute expressly provides for filing “certificates of increase,” it does not so provide in connection with decreases, thus leaving the latter, under the rule of the above cases, classed with other

amendments despite the fact that there is no apparent reason why it might not have been included in the provision making certificates of increase sufficient.

It is, therefore, my opinion that a decrease of capital stock is an alteration or amendment of the articles of incorporation contemplated by Subdivision 5 of Section 4413, Revised Codes of 1907, as amended by Chapter 264 of the Laws of 1921; that a duly authenticated copy of such amendment or alteration should be filed in the office of the Secretary of State after the same is adopted by the corporation; and that a certificate of decrease by the Secretary of State of the domicile of the corporation is not sufficient for the purpose.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.