

Opinion No. 59

**Corporations—Non-Profit Corporations—Amendment of Articles of
Incorporation—Certificate of Proceedings—Clerk and Recorder—
Secretary of State—Filing of Certificate of Proceedings Relating
To the Amendment of Articles of Incorporation of Non-Profit
Corporations**

- Held:** 1. The original certificate of proceedings for the amendment of articles of incorporation of non-profit corporations should be filed with the clerk and recorder of the county in which the non-profit corporation has its "principal place of business."
2. The secretary of state should adhere to the long established practice of accepting a certified copy of the certificate of amendment proceedings for filing, and not the original certificate.

June 27, 1958

Mr. Frank Murray
Secretary of State
Helena, Montana

Dear Mr. Murray:

You have requested my opinion whether a non-profit corporation must file the certificate of proceedings in connection with an amendment of its articles of incorporation in the office of the clerk and recorder of the county in which it has its principal place of business or with the secretary of state. The question arises because of the apparent conflict in the statutes applicable to the process of amending articles of incorporations.

Section 15-1402, RCM, 1947, relating to the articles of incorporation of non-profit corporations provides, in part:

"(d) Submission of articles. **The articles shall be submitted to the secretary of state for filing in his office** and if they conform to law he shall file the same and place thereon an indorsement of the date of filing and issue a certificate of incorporation." (Emphasis supplied)

"(f) Filing of copy of articles. A copy of the articles certified by the secretary of state and bearing the endorsement of the date of filing in his office, shall be filed in the office of the county clerk of the county in which the corporation is to have its principal office."

Section 15-206, RCM, 1947, relating to the filing of the certificate of proceedings in connection with the amendment of articles of incorporation provides, in part:

". . . a certificate of the proceedings showing in all cases a compliance with the provisions of this act, containing a copy of the resolution adopted and showing the vote thereon, and the number of shares of stock of each class voted thereon, shall be made out, signed and verified by the affidavit of the chairman of such meeting, and countersigned by the secretary of the meeting, **and shall be filed in the office of the county clerk of the county where the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk shall be filed in the office of the secretary of state . . .**" (Emphasis supplied)

Since there is no special procedure for the amending of articles of non-profit corporations the above quoted section in my opinion is applicable to non-profit as well as profit corporations. (See Section 15-201, RCM, 1947.)

It is at once clear, from the two statutes quoted above, that a non-profit corporation could not comply with the letter of the law concerning the filing of the certificate of proceedings to amend the articles of its incorporation, since its original articles were filed with the Secretary of State and not with the County Clerk and Recorder.

An examination of the records of the office of the Secretary of State between the years 1928 and 1958 reveals that it has been the practice to accept for filing a **certified copy** of the certificate of amendment proceedings as in the manner provided by Sec. 15-206, supra. In my opinion this practice should not be disturbed.

It is well established in construing ambiguous or uncertain statutes that administrative practice, long established and consistently followed is persuasive; (State v. Healy, 105 Mont. 227, 233, 70 Pac. (2d) 437) and that practical construction given a statute for a long period of time is considered strong evidence of the "meaning" of the law and should not be disturbed or overturned except for convincing reasons. (State v. Coloff, 125 Mont. 31, 35, 231 Pac. (2d) 343; Miller Ins. Agency v. Porter, 93 Mont. 567, 575, 20 Pac. (2d) 643.)

Faced with the impossibility of harmonizing Sec. 15-1402, supra, and Sec. 15-206, supra, (See Aleksich v. Industrial Accident Fund, 116 Mont. 127, 141 Pac. (2d) 1016) it is my opinion that the Secretary of State should adhere to the long established practice of accepting a

certified copy of the certificate of amendment proceedings, for filing, and not the original certificate.

It is my opinion, therefore, that the original certificate of proceedings for amendment should be filed with the clerk and recorder in the county in which the non-profit corporation has its "principal place of business." (See Section 15-111, RCM, 1947.)

Very truly yours,
FORREST H. ANDERSON
Attorney General