

Articles of Incorporation, Substitution of For Purpose of Correction—Fees, Upon Such Substitution.

Substitution of Articles of Incorporation should be permitted upon surrender and cancellation of original certificate of incorporation, when proper showing is made, by affidavit, as to the identity of the company, the reason for substitution and that no rights have vested under the first filing and certificate issued. Section 406, of the Political Code, contemplates that the articles filed in the office of the Secretary of State shall contain all of the facts required by law.

Upon such substitution, the Secretary of State should not again charge full fees in accordance with the provisions of Subdivision 4, of Section 410, of the Political Code, as amended by Chapter CXXVII, Laws of 1903, but only for the issuance of new certificate of incorporation and for recording, in accordance with the provisions of Subdivisions 33 and XVII of said section.

January 23, 1905.

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

Dear Sir:—I am in receipt of your favor of the 19th, making inquiry as to whether your office should again collect fees for filing substituted or amended articles of incorporation and issuing new certificate of incorporation, under the provisions of Subdivision 4 of Section 410 of the Political Code, as amended by Chapter CXXVII, Laws of 1903, in the case presented by the "Lower Yellowstone Water User's Association."

Section 406, of the Political Code, provides that the Secretary of State must issue to the corporation filing with him proper articles of incorporation, over the great seal of the state, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office, and that thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate by the name stated in the certificate.

In the case presented it appears that the incorporators of said company are desirous of making correction in their articles of incorporation heretofore filed, and that the articles now offered for filing show an identity of name, persons, purposes, place of operation and principal place of business showing upon their face that it is probably the same company and that the articles now offered for filing are intended in substitution of those heretofore filed.

Subdivision 4, of Section 410, of the Political Code, as amended by

Chapter CXXVII, Laws of 1903, prescribes the fees and charges to be made by the Secretary of State for filing and recording each certificate of incorporation, the language therein being "For recording and filing each certificate of incorporation and each increase of capital stock." It is my construction of said word "each" that it means separate corporation, and that the word "each", as used therein, applies only to articles of incorporation containing the required statement of facts; and, therefore, in this case, in the interest of justice and in order that the articles may be made to contain the proper statement of facts as required by law, you should permit said incorporators to file said substitute articles without again requiring them to make payment of all fees the same as if it were a new company. However, before permitting the new articles of incorporation to be filed, you should require the incorporators to surrender the certificate of incorporation by your office heretofore issued and to present and file their affidavit clearly showing that the articles now offered are in substitution or amendatory of those heretofore filed, the identity of the corporation as to name, persons, capital stock, purposes, places of operation and of business, and further showing that no right whatsoever have vested by virtue of the first articles filed and certificate of incorporation issued, and that said company has not yet engaged in or attempted to transact any business whatsoever.

The certificate of incorporation heretofore issued by your office, upon surrender, should be by you cancelled, and you should make charge for the recording of the new articles in accordance with the provisions of Subdivision 10 of said Section 410, namely, twenty cents per folio; and also for the issuance of a new certificate in accordance with the provisions of Subdivision III of said section, namely, three dollars.

You would not be permitted to return fees by you collected upon the filing and recording of defective articles of incorporation and issuance of certificate of incorporation, because the incorporators are themselves responsible for defects contained in the articles offered to be filed, but I should advise that you permit substitution of articles for the purpose of curing defects, in accordance with the above suggestions.

Yours respectfully,

ALBERT J. GALEN,

Attorney General.