

Foreign Corporations, Increase of Capital Stock. Fees for Filing.

Under Chapter 74, Laws of 1905, Foreign Corporations must pay the same fees to the Secretary of State for filing certificate of increase of capital stock as are required from domestic corporations.

Helena, Montana, May 16th, 1906.

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

Dear Sir: Your request for an opinion as to whether foreign corporations must pay the same fees for filing certified copy of certificate of increase, or of amendments to Articles of Incorporation showing increase of capital stock as are required of domestic corporations received.

It appears from the facts submitted by you that the records of your office show that the capital stock of the Rocky Mountain Bell Telephone Company at the time it filed the certified copy of its articles of incorporation in your office on March 24, 1883 was \$600,000.00, and that no certified copies of amendments to such articles of incorporation, or certified copies of certificates of increase of capital stock have ever been filed by said company since that date.

We are further informed by you that said company on March 13, 1906, amended its articles of incorporation by increasing its capital stock to \$10,000,000.00 and now wishes to file copy of such amendment or certificate of increase in your office.

Under Sec. 410 of the Political Code, prior to amendment, no mention was made of any fees to be paid to the Secretary of State by foreign corporations in filing certified copies of their Charter or Articles of Incorporation in this state.

Dev. 10 of Sec. 410, as amended by laws of 1899, p. 49, reads as follows:

"For filing each certified copy of Charter, or Articles of Incorporation of any foreign corporation, Twenty Dollars."

Under this amendment the only fee required of foreign corporations was Twenty Dollars for filing certificate copy of a charter or articles of incorporation, regardless of the amount of capital stock. Sec. 410 was amended by the laws of 1903 (Chap. XXVII), Div. 4 reading as follows:

"For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged," etc.

Div. 10 reads as follows:

"For filing each certified copy of a charter or articles of incorporation of any foreign corporation the same fee shall be charged as is provided for in Art. 4 of this Section, for district corporations."

This section was again amended in 1905, (Chap. 74) by increasing the fees mentioned in said Division 4, otherwise Divisions 4 and 5 remain the same as quoted above from the amendment of 1903.

In our opinion it was the intention of the legislature by said amendments of 1903 and 1905 to require foreign corporations seeking to transact business in this state to pay to the Secretary of State the same fees that are required of persons incorporating in this state, or of domestic corporations when increasing their capital stock.

Div. 5 of Sec. 410 as amended by Acts of 1903 and 1905, does not specifically mention "certified copies of certificates of increase of capital stock", but it does expressly state that "the same fees shall be charged as is provided for in Art. 4 of this section for district corporations", and thus the classification of fees set out in Div. 4 of this section are referred to and made a part of Div. 10.

If a domestic corporation is incorporated for one million dollars it must pay a fee of \$285.00. On the other hand, if a foreign corporation is not required to pay any fee for filing its certified copy of its certificate of increase of capital stock, it could easily evade the payment of the same fee that is charged domestic corporations, by first incorporating for ten or twenty thousand dollars and having a certified copy of its articles of incorporation filed in your office and immediately thereafter increase its capital stock to a million dollars or ten million dollars and file a certified copy of such certificate of increase.

Such a construction of said Div. 10 would practically destroy every object of the law and lead to absurdities.

Furthermore, there can be no question but what the domestic corpora-

tion upon increasing its capital stock must pay an additional fee before it can have its certificate of increase filed in your office.

If a foreign corporation after filing a certified copy of its articles of incorporation could increase its capital stock and file a certified copy of its certificate of increase without paying an additional fee therefor it would, in effect, allow a foreign corporation greater rights and privileges than those possessed or enjoyed by domestic corporations and would be a discrimination against domestic corporations, such as is prohibited by Sec. 11, Art. 15 of the State Constitution and, therefore, unconstitutional.

Criswell v. M. C. Ry. Co., 18 Mont. 167.

Iron Silver Min. Co. v. Cowie, 72 Pac. (Colo.) 1067.

If there is any doubt as to the meaning of the law, we must, if possible, construe it so as to uphold its constitutionality, "since it is always to be presumed the legislature designed the statute to take effect, and not to be a nullity."

Cooley's Const'l Limitations, 7 ed. p. 255.

In Re O'Brien, 29 Mont. 546.

We must, therefore, hold that foreign corporations must pay the same fees for filing certified copies of certificate of increase of capital stock as are required from domestic corporations for filing certificate of increase, and, as the records of your office now show the capital stock of the Rocky Mountain Bell Telephone Company to be \$600,000.00 the increase should be figured from that basis.

Your attention is also called to Senate Bill No. 46, Laws of 1901, p. 150, which provides that foreign corporations shall, before doing business in this state, file in your office a duly authenticated copy of their charter or articles of incorporation. After they have amended their charter or articles of incorporation by increasing their capital stock, they have not a "duly authenticated copy" of the charter or articles of incorporation, under which they are doing business, on file in your office until they also file such amendments, duly authenticated.

Very truly yours,

ALBERT J. GALEN,

Attorney General.