

**Foreign Corporations. Fees, Secretary of State. Capital Stock,
Increase Of. Corporations, Filing Fees.**

When a foreign corporation doing business in Montana increases its capital stock, a certificate of such increase should be filed with the Secretary of State, and the fees to be charged therefor are found specified in the law of 1905, page 161.

Helena, Mont., September 19, 1906.

Hon. A. N. Yoder, Helena, Mont.:

Dear Sir—I am in receipt of your letter dated July 13, in which you submit for the consideration of this office a certain statement of facts, and a proposition of law in connection therewith, as follows:

“The American Smelting and Refining Company was incorporated in the state of New Jersey, with a capital stock of sixty-five million dollars. A copy of the articles of incorporation was filed in the office of the Secretary of State of Montana July 15, 1899. Afterwards, and during the year 1901, the capital stock of this company was increased to one hundred million dollars, but no further filing was made in the office of the Secretary of State.”

“Should the corporation file a certificate of increase of capital stock, and if so, what fee, if any, should be charged therefor?”

You also enclose with your letter a letter received by you from

Messrs. Bates and Wight, attorneys for the above-named company, in which it is contended that there is no law in Montana requiring any corporation, either domestic or foreign, to file a certificate of increase of capital stock, and, hence, no fee can be charged or collected therefor by the Secretary of State.

The law requires all domestic corporations to file certified copies of articles of incorporation with the Secretary of State (Sections 403, 411, Civ. Code, Laws of 1905, page 224), and the fee to be charged and collected therefor is graduated by the amount of the capital stock.

Sec. 410. Pol Code.

Laws of 1903, page 290.

Laws of 1905, page 161.

If, as contended, the law does not require any corporation, either domestic or foreign, to file a certificate of increase of capital stock, then the law which requires filing fees to be graduated by the amount of capital stock is a nullity. The minimum capital stock could be named in the original articles, the minimum fee paid, and no other fee could be exacted although the capital stock of the corporation might be increased to millions.

Sections 412, 413 and 414, Civil Code, authorize the increase of the capital stock of domestic corporations, and it is provided in said section 414 that "such certificate (of increase) shall be acknowledged * * * filed and recorded, as required by Section 446 (411) of this Act."

The Supreme Court of Wisconsin under a similar statute held that the filing of this certificate of increase is mandatory.

Wood v. Association, 63 Wis., 9.

Our statute specifies what shall be stated in the articles of incorporation filed. One of these specifications is "the amount of capital stock." As was said in *Palmer v. Bank of Zumbrota*, 72 Minn. 266; 75 N. W. 380, "If it is left discretionary with the stockholders or directors to increase the amount of the capital stock at any time without amending the articles, then the articles may or may not specify the amount of the capital stock. But the statute says that they shall specify the amount; and it is the usual legislative policy to require the articles to fix and limit definitely the amount of the capital stock. Otherwise, it will be impossible to tell from the face of the articles what the amount of the capital stock is at any particular time."

It cannot be disputed that the articles required to be filed are those under which the corporation does business; but if the articles are amended the original articles are superceded by the amended articles and the corporation no longer does business under the original articles.

Section 11, Art. 15, of the state constitution, reads in part:

"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 this state."

It is contended, however, that this provision of the constitution has nothing to do with the initiation of the right of a foreign corporation to

d business in Montana. But when a fee of twenty dollars is exacted from one corporation, and a fee of one thousand dollars is exacted from another corporation of the same kind, with the same capital stock, the discrimination is so great that it gives to the one corporation an enjoyment of immunity not allowed to the other. If this provision of the constitution has nothing to do with the initiation of the right of a foreign corporation to do business in Montana, then it is within the power of the Legislature to impose a prohibitory license upon a domestic corporation, and to admit the foreign corporation without the payment of any fee at all. The domestic corporation would in that event not be permitted to enjoy any rights or privileges, while the foreign corporation could without cost enjoy all the rights and privileges, event to the extent of maintaining a monopoly; and this provision of the constitution, so far as a restriction on the power of the legislation is concerned, is a nullity. This provision of the constitution to be effective must take effect at the inception of the corporation, and not at some subsequent date.

At the time the American Smelting and Refining Company was organized, our law required, and still requires, a certified copy of the articles of incorporation of foreign corporations to be filed. (Sec. 1030 Civ. Code; Laws 1901, page 150; Laws 1905, page 161.) It certainly cannot be contended that the company could file one set of articles and then legally do business under another set of articles not filed. When the original articles on file were amended they ceased to be the articles under which the company was doing business, for the original articles were to the extent of the amendment superseded thereby.

The total fee required of foreign corporations for filing such articles in 1899 was twenty dollars (Laws of 1899, page 47) and had the certificate of increase of the capital stock been filed during the existence of that law, no greater fee could have been charged, but a certificate of increase of the capital stock takes effect from the date of filing and does not relate back to the time the original articles were filed.

10 Cyc. page 233, et seq.

This law of 1899 was repealed and superseded by the Act of 1905, and you cannot look for your authority to a law that has been repealed, but must collect the fees required by the law in force at the time the certificate is offered for filing, and in this case, that is the law of 1905, page 161.

Under the provisions of Art. 15, Montana Constitution, all corporations doing business in this state are subject to the provisions of laws enacted subsequent to the filing of the articles of incorporation, and "if a corporation fails to comply with the conditions subsequent, the state may institute proceedings to oust it from the right to exercise the powers and privileges conferred upon it."

1 Clark & Marshall Corps., page 206.

You are advised that if the original articles of incorporation of the American Smelting and Refining Company have been amended by the increasing of capital stock, a certificate of such increase should be filed

in your office, and that the fees to be collected therefor should be as specified in the Act of 1905 above cited.

Yours Very Truly,

ALBERT J. GALEN,
Attorney General.