

Fees, articles of incorporation of fraternal societies. Fraternal Society, fees of Secretary of State.

Fraternal societies not having a capital stock, and not being organized for the purpose of profit, must pay a fee of \$20.00 to the secretary of state for filing articles of incorporation; section 166 Rev. Codes having been repealed by implication in so far as it relates to fees of fraternal societies.

Helena, Montana, November 13, 1908.

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

Dear Sir:

In reply to a verbal request for an opinion we advised you orally that the proviso contained in Subdivision 4 of Section 410 of the Political Code. (Sec. 165 Rev. Codes) as amended by Chapter 74, Laws 1905, repealed by implication that part of Section 1, of Chapter 43, of the Laws of 1903, which related to fees for filing of articles of incorporation of fraternal societies not having a capital stock.

Since giving you the above oral opinion we have received a letter from Mr. Charles A. Wallace, Attorney at Law, Butte, Montana, in which he states that he cannot agree with you upon the fees for filing articles of incorporation of a fraternal society not having a capital stock and not being organized for the purpose of profit, and requests an opinion from this office upon the question. However, as private individuals are not entitled to opinions from this office we have decided to reduce our opinion to you to writing in order that you may have a record of the same, and that we can send a copy of the opinion to Mr. Wallace.

Chapter 43, Laws 1903 (Sec. 166 Rev. Codes) provided what fees the secretary of state should charge for each religious society, church organizations for religious purposes and fraternal societies not having a capital stock and not being organized for the purpose of profit. At the same session of the legislature, and seven days thereafter, the legislature, by Chapter 127, amended Section 410 of the Political Code, which also deals exclusively with the fees of the office of secretary of state, and in Subdivision 4 of said Section, as amended, the legislature inserted the following:

"Providing that no fee for filing any articles of incorporation or increase of capital stock shall be less than ten dollars, except religious societies, churches, and organizations for religious purposes not having

a capital stock and not being organized for purpose of profit." And again, in 1905, by Chapter 74, the legislature amended Section 10, and among the amendments, amended the proviso quoted above by increasing the amount from ten to twenty dollars. You will notice that in both of these amendments to Section 410 fraternal societies not having capital stock, and not being organized for the purpose of profit were omitted from the exception. Therefore, under these amendments, which expressly provide that no fee for filing any article of incorporation or increase of capital stock shall be less than twenty dollars, a fraternal society must pay a fee of twenty dollars as they do not come under the exception of religious societies, churches and organizations for religious purposes.

The above proviso contained in Subdivision 4 of said Section 410, as amended, is in direct conflict with that portion of Section 1 of said Chapter 43 of the Laws of 1903, which authorizes said fraternal societies to file their articles upon paying a fee of three dollars for issuing certificate, one dollar for filing and twenty cents per folio for recording. Where there is a direct conflict in the provisions of two laws which deal with the same subject, the rule of construction is well settled that the later enactment repeals by implication the inconsistent provisions in the former enactment. Lewis' Sutherlands Stat. Construction, in discussing the question of repeals by implication, lays down the rule as follows:

"An implied repeal results from some enactment the terms and necessary operation of which cannot be harmonized with the term and necessary effect of an earlier act. In such case the latter prevails as the last expression of the legislative will; therefore, the former law is constructively repealed, since it cannot be supposed that the law-making power intends to enact or continue in force laws which are contradictions. The repugnancy being ascertained, the latter act or provision in date or position has full force, and displaces by repeal whatever in the precedent law is inconsistent with it."

That part of said Chap. 43 of the laws of 1903 which fixes the fees of religious societies and churches and organizations for religious purposes, has not been repealed for the reason that there is nothing in the amendment to said Section 410 which is in conflict therewith. Therefore, it was necessary to insert said Chap. 43 in the Revised Codes, which was done, and as Section 166, but the part of said section which named the fees for fraternal societies has been repealed by later amendments to said Section 410, as shown above.

Very truly yours,

ALBERT J. GALEN,
Attorney General.