

**Corporations, Extending Corporate Existence of. Banking  
Corporations, Increasing Capital Stock of.**

The manner of extending the term of existence of domestic corporations is provided by Sections 3826 to 3828, Revised Codes, and Section 3907, is amended by said sections. Banking corporations must comply with the provisions of said sections

3826 to 3828 in increasing their capital stock, and must also file a certificate with the Bank Examiner, as required by Section 3918 and 4009.

Helena, Montana, May 12, 1909.

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

Dear Sir:

I am in receipt of your letter of May 12, requesting an opinion upon the following propositions:

"The Cascade Bank of Great Falls has tendered to this office for filing, an amended certificate of extension of corporate existence. This certificate shows on its face that the directors of said bank met on the 18th day of March, 1909, and called a meeting of the stockholders for the 29th day of March for the purpose of determining whether the corporate existence of said corporation should be extended for a further period of 20 years from and after April 3rd, 1909, and that they directed the cashier to give notice in writing to each stockholder through the mails.

It further appears in said certificate that more than two-thirds of the stock of said bank were represented at said meeting and voted in favor of extending the corporate existence. Does this certificate show on its face a compliance with the law now in force providing for the extension of corporate existence?

The original articles of incorporation of said Cascade Bank provided for a capital stock of \$40,000. No certificate of increase of capital stock has ever been filed in this office, but the amended certificate of extension of corporate existence recites that the entire capital stock of said corporation is and was at the date of said meeting, on March 29, 1909, 750 shares of the par value of \$100 each.

Should this amended certificate of extension of corporate existence be filed before the proper certificate showing an increase of the capital stock from \$40,000 to \$75,000 has been filed in this office?"

In answer to your first question it is necessary to first determine with sections of the statute are now in force relating to the extension of the term of corporate existence of corporations incorporated under the laws of this state.

Section 3907, Revised Codes, (which is an original section of the Montana Codes of 1895) provides the procedure for extending the term of corporate existence; also, Sections 3826, 3827 and 3828, Revised Codes, among other things, provides a procedure for extending the term of corporate existence.

Section 3566, Revised Codes, provides that,

"The following acts are, and are hereby declared to be, in full force and effect, except as herein otherwise provided."

And among which acts, the act of 1893, which is now set out in the Revised Codes, as said Sections 3826 to 3828 is specifically mentioned.

Section 3564, Revised Codes, which was in the same act with Section 3566, provides that,

"If any of the acts or parts of acts herein enumerated are in conflict with, or are consistent with, any of the provisions of the said codes \* \* \* the acts or parts of acts enumerated are to be considered and construed as amendments to the respective code or codes, whose provisions they are in conflict with, or are inconsistent with, it being intended hereby that all of the acts or parts of acts herein enumerated shall be the law of the State of Montana, upon the respective subjects, so far as they are inconsistent with the provisions of the said codes, or any of them, except as herein provided."

The question then arises as to whether the method of the extension of the term of corporate existence provided for in said Sections 3826 to 3828, Revised Codes, is in conflict or inconsistent with Section 3907, which was a code section of 1895.

The Cascade Bank was incorporated to the enactment of Sections 3826 to 3828, which were approved March 2, 1893, Section 3826 provides that,

"Any corporation or company heretofore formed, either by special act or under the general law, and now existing, \* \* \* may also extend the term of its existence, subject to the provisions and liabilities of this chapter."

Section 3827 provides that,

"Whenever any company shall decide to call a meeting of stockholders for the purpose \* \* \* of extending the term of existence, it shall be the duty of the trustees to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence, at least six weeks previous to the day for holding such meeting," etc.

Section 3828 provides that :

"If, at the time and place specified in the notice provided for in the preceding sections of this chapter stockholders shall appear in person or proxy, in number representing not less than two-thirds of all the shares of stock \* \* \* and it shall appear that a sufficient number of votes have been cast in favor of \* \* \* extending the term of existence of the corporation \* \* \* a certificate of the proceedings, showing a compliance with the provisions of this chapter \* \* \* signed and verified by the affidavit of the chairman, and to be countersigned by the secretary, and such certificate shall be acknowledged by the chairman and filed as required by Section 3825."

In our opinion the provisions: "subject to the provisions and liabil-

ity of this chapter," as contained in said Section 3826, and the provisions "it shall be the duty of the trustees to publish a notice," etc., as contained in Section 3827, and the provision "a certificate of the proceedings showing a compliance with the provisions of this chapter," as contained in Section 3828, clearly show that it was the intention of the legislature that the provisions of said Sections 3826 to 3828, inclusive, must be followed in extending the term of corporate existence of a corporation. Such provisions are clearly in conflict and inconsistent with the provisions for extending the corporate existence provided for in Section 3907, and as said Section 3564 expressly states that it is

"intended hereby that all of the acts or parts of acts herein enumerated shall be the law of the state of Montana, upon the respective subjects, so far as they are inconsistent with the provisions of the said codes,"

it necessarily follows that said Section 3827 is the only law now in force providing the method of procedure for extending the term of corporate existence.

You are therefore advised that the amended certificate of corporate existence tendered you for filing by the Cascade bank shows on its face that the provisions of said Section 3827 were not complied with in attempting to extend the corporate existence of said corporation, and is, therefore not sufficient to legally extend its corporate existence.

In answer to your second proposition, regarding the increase of capital stock, it appears from the records in your office, and from the amended certificate now presented for filing, that since the original incorporation of said bank it has increased its capital stock from \$40,000 to \$75,000. The law expressly provides that when a corporation increases its capital stock it must do so in the manner provided in said Section 3827, and must file a certificate of such increase in the office of the Secretary of State and pay the fees required by Section 165 of the Revised Codes for the filing of such certificate. This certificate of increase not having been filed, the effect of now permitting a certificate of extension of corporate existence to be filed for a capital stock of \$75,000, would be to evade the payment of the fee due the state for filing the certificate of increase.

In our opinion you would have no authority to issue a certificate of extension of corporate existence showing a capital stock of \$75,000, unless that was the amount of capital stock designated in the original articles, or a certificate of the increase of such amount has been made in the manner provided by law and filed as a record in your office.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.