

Banks, Increase of Capital Stock of. Corporations, Increase of Capital Stock of Banks.

Banks, upon complying with the provisions of Sections. 3918, or 4005, Revised Codes of Montana, and showing that at least thirty days notice of the meeting was given to the stockholders, are entitled to a certificate of increase from the State Examiner.

Helena, Montana, June 25, 1909.

Hon. H. H. Pigott,
State Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of June 23, requesting an opinion upon the following questions:

"I would like to have your opinion as to whether, as the law now stands, I am justified in issuing certificates of approval of increase of capital stock of state banks (pursuant to sections 3918 and 4005, revised codes of 1907), upon receipt by me of sworn certificate of the president and cashier of bank, containing information and statements per attached form of certificate;

and if you do not deem such information sufficient, please indicate what further information should be furnished or what further requirements I should make?"

Under the decision rendered in the matter of the Cascade Bank above referred to, is it necessary for state banks when increasing their capital stock to file certificates with the county clerk and the secretary of state, as provided in section 3828, revised codes of 1907?"

In the recent decision of the supreme court in the cases of the state of Montana, *ex rel.*, Cascade Bank v. A. N. Yoder, secretary of state, (not yet reported); the court held that Sections 3826 to 3828, Revised Codes, so far as they relate to the extension of corporate existence of domestic corporation do not apply to banks incorporated under the laws of this state.

The court further held in said opinion that sections 468 and 469, of chapter 25 of the compiled statutes of 1887, did not apply in 1891 to the increase of capital stock of state banks, and that a compliance with such sections was not necessary by a state bank in increasing its capital stock. As sections 3827 and 3828, revised codes, so far as they relate to the increase of capital stock are the same as said sections 468 and 469 of the compiled statutes of 1887, and as the supreme court has held that said sections 3827 and 3828 do not apply to banks, it necessarily follows that banks do not have to comply with the provisions of said sections in increasing their capital stock.

As they do not have to comply with said sections 3827 and 3828, the only other sections of the revised codes relating to the increase of capital stock of banks are sections 3918 and 4005 of the revised codes. These sections do not require banks, when increasing their capital stock, to file any certificate with the secretary of state. However, section 10, of article XV., of the state constitution, provides that:

"The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days' notice given in pursuance of law."

Therefore, domestic banks desiring to increase their capital stock should give at least thirty days' notice to the stockholders, but there is no general law providing the manner of giving this notice. Section 3918 expressly provides that the by-laws of the bank should provide for an increase of the capital stock, while section 4005 makes no mention of such provision in the by-laws. However, in the absence of a statutory provision providing the manner of giving notice of stockholder's meeting, the by-laws should provide therefor, and such provisions of the by-laws should conform to said section 10, of article XV., of the state constitution as to the period of notice.

In our opinion, whenever a bank has filed a certificate with you, under section 3915, or 4005, showing that a meeting of the stockholders was held, after at least thirty days notice given in pursuance of their by-laws, and that the consent of the persons holding a majority of the

stock was obtained at such meeting favoring the increase of capital stock, and showing that the whole amount of such increase has been paid into the treasury of such bank, that you are then authorized to issue a certificate specifying the amount of such increase, with your approval thereof.

Very truly yours,
ALBERT J. GALEN,
Attorney General.