

Corporations, Extension of Corporate Existence.

Corporations organized under the laws of the State of Montana must extend their corporate existence pursuant to the provisions of Sections 3826 to 3828, Revised Codes. Section 3815 relates only to the continuance of the existence of corporations organized prior to the adoption of the codes of 1895.

Helena, Montana, December 1, 1909.

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

Dear Sir:

I am in receipt of your communication of December 1, requesting an opinion upon the following proposition:

We have had some controversy with several attorneys of the state relative to the filing of certificates extending corporate existence of domestic corporations, our office contending that the same must be prepared and filed pursuant to the provisions of sections 3826 to 3828, inclusive, revised codes, while such

attorneys have attempted to extend the term of corporate existence by complying with the provisions of section 3815, revised codes.

You submit a certificate of extension of corporate existence adopted pursuant to the provisions of said section 3815, purporting to extend the term of corporate existence of the Middle Creek Ditch Company for a period of twenty years from January 25, 1910. From this certificate, it appears that said corporation was incorporated on January 25, 1890, for a period of twenty years. Chapter 25, page 722, compiled statutes of 1887, provided for the organization and management of corporations for industrial or productive purposes at the time said Middle Creek Ditch Company was incorporated. Such law, however, contained no provision by which such corporations could extend their corporate existence when their original term of existence expired. Therefore, sections 467, 468 and 469, of said chapter 25, were amended by the laws of 1893, page 111, so as to provide a method of extending the term of corporate existence of such corporations.

Sections 467 and 469, as amended by the act of March 2, 1893, were continued in force and made a part of the civil code of 1895 by section 5185 of the political code, and they appear in the civil code of 1895, as sections 412, 413 and 415, and now appear in the revised codes of 1907 as sections 3826, 3827 and 3828. Therefore said sections 3826 to 3828, inclusive, are now the law under which industrial or productive corporations, other than banking corporations, must proceed in extending their term of corporate existence. (See *State v. Yoder*, 103 Pac. 499.)

As said sections 3826 to 3828 were in force prior to the adoption of the codes of 1895, as well as since that time, it necessarily follows that corporations organized prior to the adoption of the codes of 1895, as well as those organized since that time, are governed by the provisions of said sections in extending the term of their corporate existence.

Section 3815, revised codes, has nothing to do with the extension of the term of existence of a corporation beyond the period of its original term. Such section applies only to the continuance of a corporation for the balance of its term, under the provisions of the code of 1895, where it was incorporated prior to July 1, 1895; that is, a corporation incorporated in 1890 for a period of twenty years would have been in existence five years when the codes of 1895 were adopted, and under section 3816, revised codes, it would not be governed by the provisions of such codes, but would be governed by the law existing prior to 1895. However, if such corporation wanted to continue the remaining fifteen years of its corporate existence, under the corporation laws of the code of 1895, then it would have to comply with the provisions of said section 3815. But this section would not, and does not, authorize it to extend its original period beyond the twenty years, and in order to so extend its term of existence it must comply with the provisions of section 3826 to 3828, inclusive, as shown above.

Very truly yours,

ALBERT J. GALEN,

Attorney General.