

**Banks, Increase and Extension. Extension, Existence of Bank Corporation, Capital Stock, Increase of. Capital Stock, Increase of. Corporations, Law Governing Extension of Existence of.**

1. Section 3826, Revised Codes, as amended, and Section 3827, Revised Codes, govern in the increase of capital stock of banking corporations.

2. Consent of two-thirds of stockholders necessary to increase capital stock of a bank

3. Bank officials must furnish to the state examiner certificate of increase of capital stock.

4. Section 3827, Revised Codes, governs in relation to the extension of existence of a banking corporation.

Helena, Montana, April 27, 1909.

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

Dear Sir:

I am in receipt of your two letters of the 22nd instant, submitting the following questions:

1. What section of the statute governs in the increase of capital stock by a state banking corporation?

2. Is it necessary that a state banking corporation have the consent of two-thirds of the stockholders before increasing the capital stock?

3. What evidence must be presented to the State Examiner before he has authority to issue his certificate to the effect that the capital stock of a bank has been increased?

4. What sections of the statute govern in the extension of corporate existence of a banking corporation organized under the laws of Montana?

These questions will be answered in their order:

1. Sections 3826 and 3827, of the Revised Codes, are from the Act of March 2, 1893, and under the provisions of Section 3566, Revised Codes, such acts are subsequent in point of time, and therefore controlling over the code sections of 1895. These sections, therefore, must govern in relation to the increase of the capital stock of a banking corporation except in so far as they have been amended by laws subsequent to the code sections of 1895. Section 3826 is amended by Chapter 106, Laws of 1909. Hence, the law now governing the increase of capital stock of such corporations is found in Section 3826 of the Revised Codes, as amended by said Chapter 106 of the laws of 1909, and Section 3827, Revised Codes, which gives in detail the method of procedure, and which latter section has not been amended.

2. Said Section 3827, Revised Codes, requires affirmative vote at least two-thirds of the shares of stock before the capital stock can be increased. These provisions of the statute do not conflict with Section 10, Article XV., of the state constitution.

3. Section 4005, requires that a certificate be made to the State Auditor stating that such increase has been made and has been paid in cash, specifying the amount of such increase. This report is now required by the provisions of Section 4009 to be made to the State Examiner. The State Examiner when in receipt of this certificate may, if he choose, rely thereon and issue the certificate specified in said Section 4005, or he may, if he desires, make further investigation into the legality of the methods pursued in increasing the capital stock, and if he finds that the same has not been legally increased he may refuse the certificate notwithstanding the fact that the bank officials have certified to such increase.

4. Sections 3815 and 3907, Revised Codes, both have some relation to the extension of corporate existence, but both these sections are code provisions and are, therefore, superseded by Section 3827, Revised Codes, which is a part of the Act of 1893 above referred to. Hence, said Section 3827 is the only one that governs in the extension of corporate existence.

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

Note:—The above opinion modified by decision of Supreme Court in Cascade Bank vs. Yoder 113 Pac., 499.