

Foreign Corporations, Term of Existence. Term of Existence. Foreign Corporations.

Section 3826, Revised Codes of 1907, relating to term of existence of corporations, does not apply to foreign corporations.

In the absence of any direct legislation on the subject, the term of existence of a foreign corporation is that specified in its charter or articles of incorporation.

December 29, 1910.

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

Dear Sir:

I am in receipt of your letter of the 19th inst., in which you state:

"On February first, 1897, the Oregon Short Line Railroad Company, a foreign corporation, filed its incorporation papers in the office of the secretary of state, with a capital stock of \$60,000,000, the existence of the corporation to be for a term of 50 years. On November 4th, 1910, the capital stock was increased to \$100,000,000. This corporation offers now to file amended articles in which they extend their corporate existence to a term of 100 years."

And thereupon you state:

"The question now arises, if in the absence of a provision of the length of time that a foreign corporation may exist, will Section 3826 relating to domestic corporations govern?"

There is no question as to the right of the O. S. L. R. R. Company to file the instrument submitted, in your office; it is plainly your duty to receive and file such instrument the same being presented to you in pursuance of the provisions of Sub-division 7, of Section 4413, Revised Codes of 1907. It is true that by the terms of the instrument presented for filing, such corporation apparently in compliance with the laws of the state of Utah, has extended its corporate existence to a term of 100 years, which is apparently in conflict with provisions of Section 11, Article XV, of the constitution of Montana, providing:

"No company or corporation formed under the laws of any other country, state or territory, shall have or be allowed to exercise or enjoy within this state any greater rights or privileges, than those possessed or enjoyed by corporations of the same or similar character granted under the laws of the state."

Taken into consideration with the provisions of Section 3826, of the Revised Codes, providing that,

"No corporation shall have power to extend the term of existence for a period longer than, or make the term of existence of said corporation longer in all than 40 years from the date of the original incorporation."

But from a careful examination of our codes pertaining to corporations it will be seen that the subject is treated under eleven different heads or titles. Title I, contains general provisions pertaining to all corporations, and each of the remaining titles, II to XI, inclusive, separately and exclusively treat of a separate and distinct kind of corporation, the last being foreign corporations. Section 3826 is found in Chapter I, of Title I, which deals with the formation of corporations. Undoubtedly this section has reference solely to domestic corporations. This view is fully supported by the case of *Helena P. T. Co., v. Spratt*, 35 Mont., 130. In the above cited case the court holds:

"Title XI, foreign corporations, gives to foreign corporations the right to do business in this state upon their filing a copy of their charter and designation of an agent, etc. It merely declares that a foreign corporation shall do no business in this state, until it has complied with these requirements. It is a mere license to engage in the business in this state which it charter authorizes it to engage in and is based upon comity between the states. By comity of states a corporation

created by the laws of one state may exercise all the powers it is authorized to exercise at home in the absence of any prohibitory statute or conflicting policy. The constitution is simply a limitation upon the powers of the legislature." (35 Mont. 131.)

Again in the recent case of Uihlien vs. Caplice Commercial Co., 39 Mont., at page 337, our supreme court uses this language:

"Primarily this constitutional provision is addressed to the legislative assembly. The constitutional provision was intended to prohibit the passage of laws giving to foreign corporations the right to exercise or enjoy any greater privileges than those possessed or enjoyed by domestic corporations, and it is only in cases, where a foreign corporation attempts to exercise or enjoy a right or privilege expressly given to it by the legislative assembly that its right to exercise the same may be questioned. The mere fact that a burden is placed upon domestic corporations from which foreign corporations are exempt does not operate to bring foreign corporations within the provisions of a law intended to apply solely to domestic corporations." (39 Mont. 337.)

As was said again in the case of First National Bank of Butte vs. Weidenbeck, 97 Fed. 896:

"The contention is that under this provision of the constitution, imposing any duty or obligation on a domestic corporation which is not also imposed on foreign corporations doing business in the state is unconstitutional. This position is untenable. In the very nature of things it is impossible to provide exactly the same system of law for foreign as for domestic corporations. It is never done. The constitutional provisions contemplated no such things. It is an inhibition against the granting of powers and privileges to foreign corporations that are not granted to or cannot be enjoyed by domestic corporations under like conditions." (Cited in 39 Mont. 337.)

Some authority for a conclusion that the term fixed by law applicable to domestic corporations of a like kind apply to a foreign corporation is found in the Colorado case of Iron Silver Mining Company vs. Cowie, reported in 72 Pac. 1067, and also in the case of American Smelting Co., vs. Colorado, 204 U. S. 114, in which cases it was held that the term of existence of a foreign corporation is governed by the term of a domestic corporation and that a foreign corporation must comply with statutes relating to extensions.

However, I am of the opinion that to determine the term of existence of a corporation we must of necessity look to the charter and articles of incorporation and to the laws under which the same were issued and from which it acquires its existence. It is elementary that a corporation, if not in existence in the state of its creation, of necessity could have no existence in another state, and the converse seems true, that a corporation having existence in the state of its creation, has such existence in a foreign state where it is engaged in business and has complied with the laws relative to foreign corporations. As

was said in the case of Dundee M. & T. I. Co., vs. Hughes, 89 Fed. 185:

"All foreign corporations doing business in this state under permission of its law obtain their corporate life from the laws of the states or countries whence they come. If they are in existence at their home offices they are recognized as being in existence here. Such corporation is controlled as to its dissolution by the law of its domicile and is not affected by laws which are intended to apply to domestic corporations." (89 Fed. 184.)

Our supreme court having determined as above stated that the constitutional provision is a direction to the legislature and that a foreign corporation has all the powers in this state that it is authorized to exercise at home; hence, in the absence of any prohibitory statute, the legislature of this state never having specified the term of existence of a foreign corporation within this state, in view of the expressions of the supreme court contained in the cases above cited, and for the reason that Section 3326 applies solely to domestic corporations, it is my opinion that the term specified in the articles of incorporation or character of a foreign corporation would govern in the absence of any direct legislature on the subject.

However, your duties with reference to the instrument offered are purely ministerial and the question of existence is a matter that would come up at some future period—if at all. This corporation would at least be entitled to exist for the term provided by law for domestic corporations, within the holding of *People vs. Cheeseman*, 3 Pac. (Colo.) 716.

"Where a domestic corporation is incorporated for a term of fifty years and the laws limit such existence to twenty years, the statutory provision as to time is regarded as a limitation and it may do business for twenty years."

I herewith return to you all the papers submitted.

Yours very truly,

ALBERT J. GALEN,

Attorney General.