

**Foreign Corporations, Compliance With Laws of This State.  
Railroad Companies, Requirements of Law Respecting. Articles  
of Incorporation.**

A foreign railroad company ought not to be permitted to do business in this state, except by compliance with the law relating to foreign corporations.

No duty rests upon the secretary of state to file the certificate provided for in Sec. 4291 of the Revised Codes until a duly authenticated copy of the charter or articles of incorporation of the company have been filed in accordance with the provisions of the law relating to foreign corporations transacting business in this state.

August 14th, 1912.

Hon. T. M. Swindlehurst,  
Secretary of State,  
Helena, Montana.

Dear Sir:

I acknowledge receipt of letter addressed to you by Mr. Alfred H. Bright, representing the Minneapolis, St. Paul & Sault Ste. Marie Railway Company and requesting you to file certain resolutions which it appears the board of directors of that company had adopted in compliance with the provisions of Sec. 4291, Revised Codes of Montana. This company or corporation has not heretofore been authorized to transact business in the State of Montana. The question presented by the communication therefore is:

“Does the filing with the secretary of state of the resolution named in Sec. 4291, Revised Codes of 1907, authorize a foreign railroad company to extend its line within the State of Montana and to transact business within said state without any further or other compliance with the state law relative to foreign railroad companies doing business in this state, and incidentally is it the duty of the secretary of state to file

such resolution when presented and when such corporation has not made any other compliance with the foreign corporation law of this state?"

Sec. 11, Art. XV., State Constitution of Montana, provides among other things, that:

"No foreign corporation shall do business in this state without having one or more known places of business and an authorized agent or agents in the state upon whom process may be served."

Said section further provides that no foreign corporation or company shall have or be allowed to exercise or enjoy within this state any greater rights or privileges than those possessed or enjoyed by domestic corporations.

This section of the constitution in so far as it is a prohibition is self executing.

Criswell vs. Montana Central Ry. Co., 18 Mont. 161; 44 Pac. 525.

Before a domestic railway company can legally do business within this state it must file its articles of incorporation, which articles among other things must name the termini of the road and also the general route (Sec. 3818-3819 Rev. Codes), and must also pay a filing fee (Sec. 165 Rev. Codes); and where a domestic railway corporation extends its line of road beyond the termini named in its articles of incorporation it must amend its certificate of incorporation.

Sec. 4296 Revised Codes.

Section 4413 to 4420 inclusive, Revised Codes, make certain specific requirements of a foreign corporation before the company can legally do business in this state, but Sec. 4291 provides that when a foreign railroad company's line reaches or intersects the state line it may by filing in the office of the secretary of state a resolution adopted by its board of directors be authorized to extend its road into this state, and:

"Thereupon such corporation shall have all the rights, powers, privileges and immunities, and franchises" of a domestic corporation.

If said Sec. 4291 is independent of other provisions of the statute and is the only law to which obedience must be yielded by a foreign railroad company, then it is not necessary that an agent be designated, or any place of business named, nor any filing fee paid nor any annual report made, for this section makes no statement about any of those things. It would then be enjoying greater privileges than are enjoyed by domestic corporations and the section would be void as violative of the constitution above referred to. The resolution named in said Sec. 4291 amounts to nothing more than a map or general description of definite location. It is not required to give any information as to whether such foreign corporation had been legally incorporated, chartered or organized in any foreign jurisdiction, or that its line would reach or intersect the boundary line of this state or that it was a railroad corporation. There would be no record within this

state showing that such company is a corporation at all. It would not be a legal entity within the State of Montana. Said Sec. 4291 also makes specific reference to Sec. 3818 and 3819. I do not believe that the resolution named in said Sec. 4291 can have any greater force or effect than to stand in lieu of Subdivision 5, Sec. 3819, which requires a domestic company to name the termini and general route of its line of road and particularly of Sec. 4296, which authorizes a domestic corporation to amend its certificate of incorporation extending its line of road beyond the termini named in its original articles. The resolution provided for in Sec. 4291 is in effect for the purpose of extension of the road in this state a part of the articles of incorporation and no duty rests upon you to file this resolution until a duly authenticated copy of the charter or articles of incorporation have been presented in compliance with the provisions of law relating to foreign corporations doing business in this state.

Sec. 4413 et seq.

This company may come into the state of Montana as a foreign railroad corporation or it may do as has been done by some of the other roads now operating within the state, incorporate that part of its line within the state of Montana as a domestic corporation.

It is the policy of the state to encourage railroad building within its border, not to hamper it, but a foreign company can legally do business within this state by complying with the law relating to foreign corporations. Otherwise, it would have no legal standing within the state and would be continually hampered in the conduct of its business if it could be permitted to do business at all.

I herewith return the letter addressed to you by Mr. Bright.

Yours very truly,

ALBERT J. GALEN,

Attorney General.