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Corporations. Notice, of Meeting to Increase Capital Stock.

A bank organized under the laws of this state may increase its capital stock without the thirty days notice required by law, if the unanimous consent of all the stockholders is had therefor in writing.

March 27th, 1914.

Hon. H. S. Magraw,  
State Examiner,  
Helena, Montana.

Dear Sir:

I am in receipt of an oral request from your office, asking me to pass upon the question raised in a letter from Julius C. Peters, the question being:

"As to whether it is legal for a corporation organized under the laws of this state to increase its capital stock without giving the notice required under the provisions of the laws of this state, when all of the stockholders give their consent in writing and waive notice of such action at a meeting called for the purpose?"

In an opinion to H. H. Pigott, state examiner, under date of June 25th, 1909, found in Vol. 3, Opinions of Attorney General, p. 145, it was held that banks were entitled to a certificate of increase of capital stock upon complying with Secs. 3918 or 4005 of the Revised Codes of Montana. It does not appear in that opinion whether or not that was a case exactly like the present. The present case has, however, been before various courts for decision, and examination of these cases shows that the courts are not agreed as to the power of a corporation to increase its capital stock without strictly complying with all of the constitutional statutory provisions. Cases holding that the provisions for notice contained in the constitution and statutes are primarily for the benefit of the stockholders and creditors of corporations, and that therefore an increase of stock made with the unanimous consent of the stockholders is valid are:

Nelson v. Hubbard, 96 Alabama, 238.

11 S. 428.

Riesterer v. Horton Land, etc., Co., 160 Mo. 141.

Campbell v. Argentine Mining Co. (Mont.), 51 Fed. 1.

61 S. W. 238

State v. Cook, 17 Mo. 189.  
77 S. W. 559.

The Supreme Court of California, in the case of Navaho Mining Co. v. Cory, 147 Cal. 581, 82 Pac. 247, held that the provisions of the constitution being mandatory and prohibitory with a constitutional provision similar to our own, Art. 15, Sec. 10, Constitution of Montana, strictly limited the increase of capital stock to cases where the thirty days notice was given as provided by law.

The question resolves itself, I think into deciding the purpose of the constitutional provision and the persons sought to be protected thereby. In this regard the language of Art. XV, Sec. 10, Constitution of Montana, is significant:

"No corporation shall issue stocks or bonds except for labor done, services performed or money and property actually received, and all fictitious increase of stock or indebtedness shall be void. 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."

The purposes of this provision seems to be the protection of the stockholder and to insure notice to him of an increase in the capital stock. It is a well recognized principle of law that a person for whose protection notice is required may waive such notice if he sees fit, and I am of the opinion that that principle applies to the provisions in hand. The cases upholding this view of the law appeal to me as being well reasoned and based upon sounder grounds than those holding the opposite view. You are, therefore, advised that a bank, organized under the laws of this state, may increase its capital stock, provided the unanimous consent thereto and waiver of notice in writing is obtained of all the stockholders previous to the making of such a resolution by the directors of the institution.

Yours very truly,

D. M. KELLY,  
Attorney General.