

**Banks, Increase of Capital Stock of. Capital Stock, State Banks, Increase of. Corporations, State Banks May Increase Capital Stock.**

A State Bank may increase its capital stock by complying with the provisions of Section 3894, Revised Codes, although the special banking law makes no mention of increase of capital stock of a bank.

March 30, 1915.

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

Dear Sir:

I am in receipt of your inquiry of the 18th instant, submitting the question:

Is there any provision of law authorizing a state bank to increase its capital stock?

Sections 3918 and 4005 of the Revised Codes, being a part of the banking laws of the state of Montana, prior to the enactment of the act of the Fourteenth Legislative Assembly, contains specific provisions for the increase of the capital stock of a bank. On March 6th, 1915, House Bill No. 96, known as the "Bank Act," was approved, and became a law on that day. By the provisions of that Act, Sections 3909 to 4015, inclusive, of the Revised Codes, were repealed, and this latter Act does not contain any provision relating to the increase of the capital stock of a bank, unless the provisions of Section 29 thereof, relating to the conversion of the surplus "into paid in capital" has some relation thereto.

The general incorporation law of the State, Section 3826, et seq., as amended by Chapter 106 of the Laws of 1909, contains provisions for the increase of capital stock of "any corporation or company heretofore formed either by special Act or under the general law \* \* \*"

In *STATE ex rel CASCADE BANK v. YODER*, 39 Mont., 202, the Supreme Court held that said Sections 3826 et seq., had no relation to banks or banking after the enactment of the Act of March 5th, 1887, being an Act concerning banks and banking, and comprising all of Chapter 27, Fifth Division of the Compiled Statutes of 1887. It appears that there was not at the time of such decision any provision in the banking law relating to the extension of the corporate existence of the bank, but notwithstanding such omission, the court held that the provision of the general law, as found in Section 3907, applied. The court further found that there was not any substantial conflict between the provisions of said Section 3907 and the Act of March 2nd, 1893, which now constitutes Section 3826 et seq. The only other provision of our statute relating to the increase of capital stock of a corporation, is found in Section 3894, Revised Codes, which appears to be an original Code Section, and was not referred to by the Court in the case above noted. This Section, 3894, appears as a general provision of law relating to corporate powers, but being an original Code Section, if its provisions are inconsistent with the Act of 1893, above referred to, then it would be amended by the provisions of that Act, Sections 3564, 3565 and 3566, Revised Codes. But the provisions of said Section 3894 are not varied as much by the said Act of March 2nd, 1893, as are the provisions of Section 3907, and with reference to this latter section, the court held there was no substantial conflict between it and the Act of 1893; hence, that the provisions of Section 3907 were not amended. By the same reasoning, the provisions of Section 3894 have not been amended. We then have this condition: The general banking law of the State formerly contained a provision authorizing an increase of the capital stock of a bank, but this provision of the law was repealed. Two provisions of the general law relating to the increase of the capital stock, one of which, that expressed in Section 3826, et seq., the court has held did not apply to banks; the other expressed in Section 3894, Revised Codes, which has never been analyzed by the Supreme Court with reference to its relation to banks. It is a general and fundamental principle of law that:

"Where a provision which excepts a class or specified localities from the operation of the Act, is repealed, the law operates generally over the excepted class or locality."

Lewis' Sutherland Stat. Construction, p. 295;

Heinssen v. State, 14 Colo. 228; 23 Pac. 995.

It is further held by the same authority, in paragraph 284, that the repeal of an Act prohibiting a remedy restores the remedy. It is also held that:

"The repeal of an exception extends the purview."

Smith v. Hoyt, 14 Wis. 273.

In this latter case, the court said:

"Where the statute creating the exception is repealed, the general statute which was in force all the time would then

be applicable to all cases according to its terms \* \* \* \*  
But if a proviso creating an exception to the general terms of a statute should be repealed, courts would be afterwards bound to give effect to it according to those general terms, as though the proviso had never existed."

As long as Section 3918, and 4005 of the Revised Codes, being a part of the special banking act, were law, of course the general provisions of law could not attach to the banks, with reference to the matters dealt with in these Sections, but when these sections were repealed, then under the authority above cited, the general law of the state, which was in force all the time, would be applicable to all cases according to its terms. The provisions of Section 3826, et, seq., cannot apply to banks, by reason of the decision of the Supreme Court in the case above cited. Hence, the only general law remaining in section 3894, which is a general law "which was in force all the time." We believe that banks may now proceed under that law in the matter of increasing their capital stock.

Yours very truly,

D. M. KELLY,

Attorney General.