

**Corporations, When Must Comply With the Banking Law. Banking Law, Applicable to Corporations When. Investment Companies, When Subject to Banking Act. Name of Corporation, Must Not Be Similar. Foreign Corporations, Name of Not Similar to Other Corporations.**

All corporations to which the banking act applies, not doing business in Montana on March 6, 1915, are subject to the provisions of Chapter 89, Session Laws of 1915.

A foreign corporation seeking to do business in Montana, must comply with the provisions of law forbidding two corporations having the same or similar names.

Helena, Montana, September 15, 1915.

Hon. H. A. Magraw,  
Supt. of Banks,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter submitting the following questions:

1. Do the provisions of Chapter 89, Session Laws of 1915, apply to corporations named therein whose Articles of Incorporation were not filed until subsequent to March 6th, 1915?

2. Are the provisions of the law forbidding a corporation using a name similar to a prior corporation applicable to foreign corporations?

1. Chapter 89, Session Laws of 1915, was approved and took effect on March 6th, 1915. All corporations to which that Act applies, whose Articles have been filed subsequent to March 6th, 1915, are subject to the provisions thereof. This, however, can not have the effect of depriving a corporation of its property rights.

Butte Hardware Co. v. Cobban, 13 Mont. 351.

Uihlein v. Chaplice Com. Co. 39 Mont. 327.

2. Section 3825, Revised Codes, as amended by Chapter 106, of the Session Laws of 1909, prohibits a corporation from using the name, or any similar name of any existing domestic corporation. This chapter has specific reference to domestic corporations, but the proviso therein is not by its own terms limited to domestic corporations, but is a direct prohibition against the accepting or filing of Articles of a proposed corporation which designate a name similar to that of any then existing domestic corporation. If this law is not broad enough to include foreign corporations, then in its practical application, it is of no avail, for its evasion could be easily accomplished. The purpose of the law is to protect corporations in the use of the name selected, and to prevent one corporation from doing business on the credit of another corporation, by reason of using the same or a similar name. The law seems to recognize that a corporation has a right to the exclusive use of the name selected by it, as appears in its Articles of Incorporation. Section 11 of Article XV of the State Constitution, contains the following provision:

“And 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 created under the laws of the state.”

While this provision of the Constitution may not be self-executing so as to compel a foreign corporation to do a specific thing which is required of a domestic corporation when no reference therein is made to a foreign corporation, yet it is self-executing as a prohibition against granting to any foreign company, or permitting any foreign company from exercising any greater rights or privileges than are possessed or enjoyed by domestic corporations of the same or similar character. This has been repeatedly affirmed by the Supreme Court of this state.

Uihleim v. Chaplice Com. Co. 39 Mont. 327;

Lewis v. N. P. Ry. Co. 36 Mont. 207.

I am, therefore, of the opinion that the provisions of the law prohibiting one corporation from using the name of a prior corporation, applies to foreign corporations as well as to domestic corporations.

I return herewith correspondence submitted by you.

Yours very truly,

J. B. POINDEXTER,

Attorney General.