

**Foreign Corporations—Filing Fees—Increase of Capital Stock.**

A foreign corporation must pay the same fees for filing a certificate of increase of capital stock as a domestic corporation.

February 8, 1917.

Hon. C. T. Stewart,  
Secretary of State,  
Helena, Montana.

Dear Sir:

You have submitted to me a letter from the attorneys for the United States Gypsum Company, dated January 10th, together with a copy of their letter to the former Secretary of State, dated April 14th, 1916.

Section 4413 of the Civil Code provides that a foreign corporation, before doing business in Montana, must file in your office and in the office of the County Clerk of the county wherein they intend carrying on business, a duly authenticated copy of its charter and articles of incorporation, together with a certain statement properly verified. Section 4416 provides that every such corporation shall annually, and within two months from the first day of April of each year, file a report in your office and also in the office of the County Clerk.

By the provisions of Section 165, the Secretary of State must charge three dollars for filing each certificate of incorporation and each certificate of increase of capital stock, and also the sum of five dollars for each annual statement of any foreign corporation. Subdivision IV of this section prescribes the charges for recording and filing each certificate of incorporation and each certificate of increase of capital stock, and makes the minimum charge for the same twenty dollars. Subdivision 10 of the same section provides that the same fee shall be paid by foreign corporations for filing each certified copy of charter and articles of incorporation as is provided in subdivision 4 of the same section for domestic corporations. You will notice that this section does not provide a charge for a foreign corporation for filing certificate of increase of capital stock.

Subdivision 10 of Section 165, was in effect amended, although not in express terms, by Chapter 37, 1915 Session Laws. This Chapter provides that every foreign corporation required to file in your office a certified copy of its charter and articles of incorporation shall pay for such filing "upon the proportion of its capital stock then or thereafter to be represented by its property and business in Montana" upon a certain scale of charges, and further providing for a minimum fee of twenty dollars. The Chapter further provides how this proportion shall be computed.

You will notice that this Chapter does not provide for any charge for filing a certificate of increase of capital stock by a foreign corporation. But paragraph 7 of Section 4413 of the Civil Code provides that in case any foreign corporation increases its capital stock, it must, within thirty days thereafter, file a duly authenticated copy of such increase of capital stock in the office of the Secretary of State and in the office of the County Clerk of the County, and whenever any foreign corporation increases its capital stock it shall pay to the Secretary of State, at the time of filing its duly authenticated certificate thereof, the same fee that is required by law from domestic corporations.

Referring to the letter which was written by the attorneys for the United States Gypsum Company dated April 14th, 1916, to the Secretary of State, and their recent letter to you under date of January 10th, 1917, a fee of \$338.00 was properly charged by your office for filing certified copy of increase of preferred stock from \$4,500,000.00 to \$6,000,000.00, and a fee of \$288.00 was properly charged for filing in your office a certificate of increase of capital stock from \$7,500,000.00 to \$8,500,000.00. This is in accordance with the provisions of Paragraph 7 of Section 4413 and subdivision IV, Section 165 of the Revised Codes of Montana.

The case of State ex rel General Electric Company v. Alderson, 140 Pac. 82; 49 Mont. 29, referred to in the letter from the attorneys of the United States Gypsum Company, dated April 14th, 1916, does not support the contention claimed, but holds that the right of a foreign corporation to engage in purely local private business in this state is a matter of grace on the part of the commonwealth, and not a matter of right on the part of the corporation, and that the Secretary of State should demand fees for recording and filing certificates of incorporation of foreign corporations seeking to engage in strictly private intrastate business. And in this connection you might call their further attention to the case of United Missouri River Power Company v. Yoder, 108 Pac. 912; 41 Mont. 245 where it was held that your office properly charged a foreign corporation for filing a certificate of increase of capital stock a fee, based upon the difference between its former capitalization and the present one.

I am returning herewith the letters which you submitted to me and also a copy of this letter which you may forward to the attorneys for the United States Gypsum Company.

Respectfully,

S. C. FORD,

Attorney General.