

Banks and Banking—Stockholders, Meeting Of—Capital Stock, Increasing or Decreasing.

Where all the stockholders of a bank are present at a meeting for the purpose of decreasing or increasing the amount of the capital stock, notice of the meeting may be waived.

February 25th, 1920.

Mr. H. S. Magraw,
Superintendent of Banks,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date with reference to the holding of a meeting of shareholders of a bank for the purpose of increasing or decreasing the amount of capital stock, and asking whether it is necessary that notice be given of such meeting when all of the shares of stock are represented either in person or by proxy, and inclosing a form of proxy and a form of the minutes for such a meeting, for my approval.

Chapter 89, Session Laws 1915, contained no provision for the increasing or diminishing of the capital stock of a bank, but this defect was remedied in 1917, when the legislature, by Chapter 148, Session Laws 1917, added three new sections to Chapter 89, Session Laws 1915, being Sections 16 C, 16 D and 16 E, these sections authorizing the capital stock of a bank to be either increased or diminished, and prescribing the procedure therefor. This procedure requires a meeting of the shareholders to be called by the trustees or directors, notice thereof to be published in a newspaper, and notice to be mailed to each shareholder, the notice to specify the object, time and place of meeting, etc.

The only purpose of requiring this notice to be given is to inform the shareholders of the proposed action, the time and place when the same will be taken, etc., so that all shareholders will be afforded an opportunity to be present and express themselves regarding the proposed action. If all shareholders are present at the meeting, either in person or by proxy, and participate in the meeting, the very object has been accomplished which the notice is intended to accomplish. I am, therefore, of the opinion that it is not necessary to give notice of the meeting in the manner required by these sections if all shareholders are present at the meeting either in person or by proxy, but notice thereof is thereby waived.

However, regarding the form of proxy, I am doubtful if it is sufficient, as I believe that the purpose should be stated more definitely. The purpose is stated in the proxy as follows: "for the purpose of voting upon the question of increasing the capital stock of said bank in any manner desirable by the stockholders thereof," etc. The proxy should be so drawn as to show the amount to which the capital stock is to be increased. Under the proxy in its present form, if the capital stock of a bank was \$50,000 the meeting might authorize an increase to any amount beyond \$50,000, yet some of the shareholders signing proxies might only desire that the increase be to a certain definite amount. I would suggest that instead of using the words: "in any manner desirable by the stockholders thereof," the amount to which the stock is to be increased be specified, as for instance, "from \$50,000 to \$75,000," or whatever the amounts may be. This will also make the proxy correspond to the written waiver to be written into the minutes.

I think it would also be well to have the minutes not only show the different shares of stock represented by proxy, but also to insert in the minutes a form of the proxy signed by the shareholders giving proxies, together with a recital that each and every shareholder represented by proxy signed a proxy in the form given in the minutes.

Respectfully,

S. C. FORD,

Attorney General.