

**Corporations, Foreign, Stock Of No Par Value—Articles
Of Incorporation, Stock Of No Par Value May Be Filed—
Stock Capital, When No Par Value, Articles May Be Filed.**

Articles of incorporation of foreign corporation with stock of no par value may be filed.

May 27, 1920.

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

Dear Sir:

I return herewith a file of correspondence and Articles of Incorporation of the Holly Sugar Corporation. This matter has been referred to me informally for a ruling upon the question of whether or not the Holly Sugar Corporation is entitled to have its Articles of Incorporation filed in your office and receive permission to do business in this state under the laws regulating foreign corporations. The Holly Sugar Corporation is organized, created and existing under and virtue of the laws of the state of New York. .

When a corporation is organized and created under the laws of any particular state and receives its charter from such state, it is a legal entity and entitled to do business in the state of its creation. At common law there is a principle known as comity between states and nations. This principal of law is in operation in the state of Montana unless restricted by some statutory provision. Under this principle a corporation created and permitted to do business in the state of its creation is entitled to enter the state of Montana and to do business. The qualificaion to this principle is that the kind of business the for-

eign corporation seeks to engage in must not be against the public policy of the state of Montana. This policy must be manifested by statutory enactment of court decisions. Mere failure to act on the part of the state would not constitute an expression of policy. (Cowell v. Colo. Sprgs. Co. 100 U. S. 55, 25 L. ed. 547.)

The nature of the business which the Holly Sugar Corporation seeks to do in the state of Montana is permitted. The only question presented is that the corporation under its articles provides its shares of stock have no nominal or par value. The capital of the corporation with which it desires to do business is the sum of \$5,590,000.00 which is divided into 58,000 of common stock and 53,000 of preferred stock. The preferred stock has a par value of \$100 per share.

The laws of the state of Montana make no specific requirement that a foreign corporation shall divide its capital into shares of a nominal or par value.

The question of whether or not a corporation has particular powers must be determined from the articles of its incorporation and the laws of the state creating the said corporation. Upon this proposition there is the limitation that a corporation can not carry on a business in a foreign state which is prohibited by the laws of such state. (Saltmarsh v. Spaulding, 147 Mass. 224, 17 NE. 316, 5 Thompson Corporation, Sec. 6627.) It is further the general rule that the courts of a state foreign to that in which a corporation is created but in which it is doing business as foreign corporation have no control over the internal management of such corporation. (5 Thompson Corporation, Chapter 185.)

Chapter 149 Session Laws of 1917 of Montana, I do not believe applies to the question here involved. That chapter is designated to regulate only the manner or method of doing business within the state. The matter of organization or frame work of a corporation is something different from the privileges and powers it exercises and the method of such exercise. The supreme court of Montana in the case of Uihlein v. Caplice Com. Co. 39 Montana 327, 102 Pac. 564, has held that the constitutional provision, Sec. 11, Art. XV. which requires that foreign corporations shall have no greater powers than domestic corporations applies only to the methods of doing business and the powers which the corporation seeks to exercise. The supreme court expressly states that in the very nature of things, it is impossible to provide the same system of laws for foreign corporations as is usually provided for domestic corporations. In the case of McMurry v. Sidwell, 155 Ind. 560, 58 N. E., 722, 80 Am. St. Rep. 255, it was held that a foreign corporation capitalized under the laws of a foreign state at a greater amount than was permitted for a similar corporation in the state of Indiana is not a ground for refusing to admit it into that state.

Practically the precise question here involved has been decided in favor of the contention made by the Holly Sugar Corporation in the state of Kansas (N. AM. Pt. Co. v. Hopkins 181 Pac. 625.) In that case the State Charter Board refused to grant the plaintiff the permission to do business in the state of Kansas on the ground that its capital stock had no nominal or par value. It was a Delaware cor-

poration and this organization was permitted by the laws of that state but not by the laws of the state of Kansas. While the statutes of Kansas are not exactly alike with those of Montana regulating foreign corporations yet I am of the opinion that the Kansas decision is correct.

Under the circumstances, therefore, I am of the opinion that Chapter 149 Session Laws of 1917 or similar provisions were not meant to prevent a corporation from entering the state of Montana merely because its organization or frame work was not such as complies with statutes under which domestic corporations may organize. Such statutes are rather designated to prevent foreign corporations after being organized from entering the state of Montana and carrying on a business not permitted by domestic corporations or carry it on in a manner not permitted by domestic corporations. In view of the fact that we have no statute expressly prohibiting a corporation such as the Holly Sugar Corporation is from entering the state of Montana and carrying on a legitimate business, I am of the opinion that its Articles of Incorporation should be accepted and filed in your office and that it be given a charter under which it might conduct business in the state of Montana.

Respectfully,

S. C. FORD,

Attorney General.