

Corporations—Capital Stock—Fees—Annual Reports.

The filing fees for the annual report of a corporation which entered Montana in 1921 should be based upon its authorized capital stock and in accordance with chapter 37, laws of 1915.

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

April 22, 1926.

My dear Mr. Stewart:

You have requested my opinion on the following questions:

“Where the annual report of a corporation which entered Montana in 1921 shows a greater proportion of the authorized capital of such foreign corporation represented by its property and business in Montana than that upon which the fee for filing

was based, and the capital stock of said corporation is of no par value. (1) should the assessment be based upon the amount of outstanding stock of said corporation or the amount of the authorized capital thereof? (2) Does section 5, chapter 95, laws of 1925 apply in assessing the fee due on the report or should such fee be assessed in accordance with chapter 37, laws of 1915?"

In answer to your first question, section 4, chapter 95, laws of 1925, provides as follows:

"Whenever such report shall show a greater proportion of the authorized capital stock of such foreign corporation represented by its property and business in Montana than that upon which the fee for filing was based, such foreign corporation at the time of filing such report, shall pay such additional fee as it would have been required to pay for filing if such fee had been calculated on the basis of the proportion of the authorized capital stock represented by its business and property in Montana as shown by such report."

It will be noted that no mention is made of the outstanding capital stock in this section but that it is specifically provided that said fee shall be calculated on the basis of the proportion of the *authorized capital stock*. I see no reason, therefore, in assuming that the fee in question should be calculated on the proportion of the outstanding capital stock, and it is my opinion that it should not be so calculated but should be calculated on the proportion of the authorized capital stock as therein provided.

In answer to your second question, and again referring to section 4, chapter 95, *supra*, this section provides:

"Such corporation at the time of filing such report, shall pay such additional fee as it would have been required to pay for filing if such fee had been calculated on the basis of the proportion of the authorized capital stock represented by its business and property in Montana as shown by such report."

Thus, the fee to be charged is the amount that the corporation would have had to pay at the time it entered the state in 1921 if the proportion of its authorized capital stock represented by its business and property in Montana had equalled the amount now shown by the report in question, less the fee already paid. It is clear that the amount of the fee required under the above condition would not have been estimated as provided in section 5, chapter 95, laws of 1925, for the reason that no such provision existed at that time; therefore, the corporation would have only been required to pay a fee estimated as provided at the time it entered the state, or, in other words, as provided in chapter 37, laws of 1915.

It is, therefore, my opinion that the provisions of section 5, chapter 95, *supra*, do not apply to this particular corporation.

Very truly yours,
L. A. FOOT,
Attorney General.