

### Corporations—Term of Existence—Existence.

A corporation formed in 1910 for a period of 25 years could have been chartered for a period of 40 years under statutes cited in opinion.

W. E. Harmon, Esq.,  
Secretary of State,  
Helena, Montana.

June 11, 1930.

My dear Mr. Harmon:

You state that the Orchard Canal Company was incorporated in 1910, and in its articles of incorporation provided that the term of its corporate existence should be twenty-five years. It now seeks an extension of its corporate existence for a period of forty years.

At the time of its incorporation the Revised Codes of Montana of 1907 contained the following provisions in point:

Section 3808 set forth purposes for which private corporations are formed.

Section 3818 provided what the articles of incorporation should contain, including the full term for which it was to exist, not exceeding 20 years.

Section 3825 provided as to how corporations might be formed and contained the following:

“At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, or mechanical business of digging ditches, building flumes, etc., or for any purpose for which private corporations may be formed as set forth in Section 3808, must prepare and sign and acknowledge and file articles of incorporation in the office of the county clerk \* \* \* and with the Secretary of State, \* \* \* and thereupon the persons signing \* \* \* shall be body politic \* \* \* for a term of

forty years unless in the Articles of Incorporation otherwise stated, or in this code otherwise and especially provided.”

It is clear that as Section 3818 requires that the articles of incorporation shall set forth the term for which the incorporation is to exist, not exceeding twenty years, and as Section 3825 provides that its corporate existence shall be forty years unless otherwise provided in the articles of incorporation, that the statutes are repugnant in this respect, and that the provisions of Section 3825 so far as the life of the corporation are impossible under the provisions of Section 3818. We are faced with direct conflict in the statutes. Section 3825 is a later enactment being the act approved March 7, 1907, Tenth Legislative Session, Chapter 163, and Section 3818 being the act approved March 7, 1905, Ninth Legislative Session, Chapter 102. The later enactment prevails. (Clark vs. Maher, 34 Mont. 391, 87 Pac. 292.)

You are accordingly advised that the Orchard Canal Company at the time of its incorporation could become incorporated for a period longer than twenty years.

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