

Corporations—Foreign Corporations—Articles of Incorporation—Filing—Secretary of State.

The Association Against the Prohibition Amendment, a foreign corporation, organized under the Laws of the District of Columbia, held not to be an educational corporation and not entitled to do business in Montana for reasons stated in the opinion.

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

September 19, 1930.

My dear Mr. Harmon:

You have submitted to this office a certified copy of the articles of incorporation of the Association Against the Prohibition Amendment, a corporation organized under the laws of the District of Columbia, together with the statutory statement submitted by it and required to be filed by foreign corporations seeking to do business in Montana, and have requested an opinion as to whether or not this corporation is entitled to have said articles and said statement filed in your office.

In the first place, the statement presented with said articles does not conform to Section 6651, R.C.M. 1921, which requires, among other things, that the corporation shall file with the certified copy of its articles a statement verified by the oath of the president and secretary, and attested by a majority of its directors, showing the location of its principal place of business without the state, the location of the place of business or principal office within the state, the names and addresses of the officers, trustees or directors, the amount of the capital stock, and the amount of capital invested in the state of Montana.

The statement accompanying these articles does not conform to these requirements in that (a) it is attested by five persons as a majority of the directors, but the names of the directors are not shown so that it can be determined that said five persons constituted a majority of the directors; (b) the names of the directors, officers, or trustees are not shown at all on the sworn statement. On a separate sheet of paper, without any identification to show that it is intended to be a part of the sworn statement are the names of persons constituting the executive committee, the name of the chairman of the board of directors, the president, nine vice presidents, the treasurer, secretary, and the comptroller, together with their addresses. This separate sheet of paper containing the above information is typewritten, is not sworn to, and is not in any way by reference in the sworn statement, made a part thereof; (c) the statement does not disclose the place of business or principal office of the corporation in Montana.

The above defects render the statement insufficient and, accordingly, neither the articles nor the statement should be filed.

In the second place, the question arises whether this corporation is entitled to be admitted to do business in Montana under any circum-

stances. Under our constitution a foreign corporation "shall not have or be allowed to exercise or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this state." If the domestic corporation may not do the business stated in the articles of incorporation of this foreign corporation then the foreign corporation may not be permitted to conduct its business in Montana.

The certified copy tendered by this corporation states its purposes to be as follows:

"The particular business and objects of the Association shall be to educate its members as to fundamental provisions, objects, and purposes of the Constitution of the United States; to place before its members and before other American citizens information as to the intentions and wishes of those who formulated and adopted the Federal Constitution, to publicly present arguments bearing upon the necessity for keeping the powers of the several States separated from those of the Federal Government, and the advisability of earnest consideration before yielding up by the several States of those powers which pertain to local self-government. It shall be the purpose of the Society to favor and encourage obedience to the Eighteenth Amendment of the Federal Constitution and to all laws passed to carry into effect the provisions of that Amendment, but the Society purposes at the same time to conduct an educational campaign intended to convince the electorate that said Amendment establishes in certain respects, an unwise and dangerous precedent, and that its repeal would be for the best interests of our country."

The laws of the District of Columbia, under which this corporation is purported to have been organized, provide that corporations may be organized for educational purposes and mutual improvement, and Section 5903, R.C.M. 1921, permits the incorporation of corporations to support educational undertakings. There is no provision in Section 5903 which specifies the purposes for which corporations may be formed which would cover the transactions of this foreign corporation unless it comes within the purpose above stated, to-wit, to support educational undertakings; and there is no other provision of our law which would authorize a domestic company to be incorporated for the purposes mentioned in these articles. Under the provisions of Section 5903 no corporation can be formed in this state except for the purposes therein mentioned, and this would apply to corporations of this kind unless there is some other statutory enactment which permitted their incorporation which I do not find to exist.

The question is, therefore, is this corporation in fact organized for the purpose of supporting educational undertakings within the meaning of our law so that a similar corporation could be formed in Montana for the same purpose?

In the preamble it is stated that the incorporators associate themselves for educational purposes and mutual improvement, and thereafter

follows the particular business and objects of the association which have been heretofore set forth. The purpose of a corporation should be ascertained from the whole of its articles of incorporation and not from disconnected parts, sentences or clauses. Taking these articles of incorporation as a whole, it appears to me that the particular business and objects of the association as set forth in the third paragraph are merely the means employed to achieve the purpose or object of the association and not the purpose and object thereof itself. The ultimate end sought to be attained by it, through the functions of the corporation, is the repeal of the Eighteenth Amendment to the Constitution of the United States, which purpose is emphasized by the name which the incorporators selected. The declared object of educating its members as to the fundamental provisions, objects and purposes of the constitution; to place before its members and the American citizens information as to the intentions and wishes of the founders of the Constitution; to present public arguments bearing upon the necessity for keeping the powers of the several states separated from those of the government, and to conduct an educational campaign intended to convince the electorate that the Eighteenth Amendment is an unwise and dangerous precedent and that its repeal would be for the best interests of our country, are but a designation of the means which the corporation intends to employ in an effort to effect a repeal of the Eighteenth Amendment. Had the corporation merely stated that its purpose was to endeavor to procure the repeal of the Eighteenth Amendment, it could have done everything that it stated in its articles, as an incident to its right to further its main purposes, without having expressed these incidental particulars in the articles of incorporation; provided, of course, that a corporation could be formed in Montana for that purpose.

The so-called educational program is not the main object and purpose of the corporation. It can hardly be contended that the corporation would go to the trouble and expense of "educating" the people of the United States to the view that the Eighteenth Amendment should be repealed without having in view that the people, when converted to the views of the association, would proceed to repeal the Eighteenth Amendment. The real purpose of the corporation is to procure the repeal of the Eighteenth Amendment through the means stated in the articles of incorporation. The word "educate" of late has been used in a very broad sense. Manufacturers and salesmen are said to "educate" the trade concerning the merits of the articles which they have for sale. It could hardly be said that such a corporation would stay in business long if it succeeded in convincing the trade of the merits of its products but failed to sell them, as the main purpose of such a corporation is to sell its products, and the so-called "educating" the people with relation thereto is but the means of effecting the sales. So it is with the so-called educational program of this corporation. It would hardly say that it achieved its purposes if it convinced the people of the soundness of its views, but failed to secure a repeal of the Eighteenth Amendment.

Our statute permits the incorporation of corporations to support

educational undertakings. Our statute contemplates institutions of learning where education is the ultimate and final object of the institution. As under the Montana law a domestic corporation could not be formed for the purposes stated in these articles of incorporation (and this is solely because our statutes limit the purposes for which corporations may be formed), it follows that this corporation, under the constitution, cannot be admitted to do business in this state which a domestic corporation could not do.

It might be claimed that a corporation having for its purpose that which this foreign corporation has, could be formed under Chapter 112, Laws of 1923, amending Section 6453, R.C.M. 1921. The section, before amendment, provided that associations or persons, where pecuniary profit is not the object, might become incorporated for certain religious, fraternal, benevolent and charitable purposes therein mentioned. By the amendment it was provided that in addition to the purposes theretofore stated incorporation could be made "for any lawful purpose." This office has heretofore held that these additional words added by the amendment in 1923 must be limited in their effect to religious, fraternal, benevolent or charitable activities as otherwise the amendment would be unconstitutional, due to the fact that the title of the amendatory bill merely stated that certain sections of the code relating to the formation of religious, fraternal, benevolent and charitable corporations were amended. This title would be insufficient to give notice that the amendment sought to permit non-profit corporations to be incorporated for other than religious, fraternal, benevolent and charitable purposes. A corporation such as the one under consideration in no sense can be classified under either of these descriptions.

Furthermore, an inspection of the laws of the District of Columbia, under which the corporation in question filed its articles of incorporation, does not require the corporation to be a non-profit organization. If it were an educational corporation it could be such for profit and there is nothing in the articles of incorporation which would preclude it from being a corporation organized for profit. Under Chapter 112 no corporation can be formed thereunder except that it is a non-profit corporation.

This office in 1926 rendered an opinion to the secretary of state with reference to the proposed articles of incorporation of a domestic corporation which had for its purpose the repeal of the Eighteenth Amendment, and other kindred purposes. It was then held that there was no law in Montana which authorized the incorporation of an organization for such purposes. I see no distinction between that proposed corporation and the foreign corporation that is seeking to be admitted to Montana, and, therefore, it is my opinion that the said Association Against the Prohibition Amendment is not entitled to do business in Montana as a foreign corporation, and you are not required to file its articles and statement even though they were in correct form.

Very truly yours,

L. A. FOOT,
Attorney General.