

Corporations—Names—Foreign Corporations.

Our statute does not prohibit a foreign corporation from using a name similar to another foreign corporation.

John W. Mountjoy, Esq.,
Secretary of State,
Helena, Montana.

December 6, 1928.

My dear Mr. Mountjoy:

On August 11, 1928, this office rendered an opinion to you to the effect that the Imperial Royalties Corporation, Imperial Royalties Company, and Imperial Royalties, Inc., could not file their articles of incorporation in your office since the names were so nearly alike as to lead to confusion.

In that opinion this office referred to an opinion of former Attorney General J. B. Poindexter, appearing in Volume 6 at page 238, wherein he held that the provisions of Section 5908 R.C.M. 1921 applied to foreign corporations as well as domestic corporations.

Upon request of the attorneys representing these corporations I have given this question further consideration and I have concluded that the opinion heretofore rendered was erroneous for the following reason:

Section 5908 provides for the manner of forming corporations in this state and contains this proviso:

“* * * provided, however, that no articles of incorporation shall be accepted and filed by the secretary of state which designate a name for the proposed corporation which is the same as that of any existing domestic corporation, or which, in the judgment of the secretary of state, is so similar to the name of any existing domestic corporation as to mislead or confuse persons dealing with such corporations.”

That this language was intended by the legislature to prohibit the duplication of names of domestic corporations only, seems to me clear. The statute expressly prohibits the acceptance of articles of incorporation designating a name the same or similar to existing domestic corporations only. It says nothing about the names of foreign corporations.

It is generally held that statutes similar to ours do not prevent two or more foreign corporations from filing articles of incorporation with the same or similar names providing such names do not conflict with the names of an existing domestic corporation. (See 14 C.J. Page 333).

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