

Corporations—Corporate Existence—Section 5916, R.C.M. 1921—Chapter 7, Laws 1931.

Chapter 7, laws of 1931, not being germane to the subject matter of section 5916, R.C.M. 1921, sought to be amended, is unconstitutional and void and does not conflict with the provisions of chapter 38, laws of 1931.

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

July 2, 1931.

My dear Mr. Harmon:

You have requested an opinion whether section 5926, R.C.M. 1921, is repealed by chapter 7, laws of 1931, whether chapter 38, laws of 1931, repeals chapter 7, *supra*, or whether both later acts are in effect.

Chapter 7, laws of 1931, is an amendment of section 5916, R.C.M. 1921, which section was enacted as section 400, civil codes 1895, and applies only to such corporations as were organized prior to the adoption of the codes of that date, providing a means whereby such corporations could bring themselves within the provisions of the code and continue their corporate existence thereunder. (See *Manerd vs. M. C. Railway Company*, 22 Mont. 340.)

By the above act the legislature has attempted to amend this section so that it no longer provides for a continuance of corporate existence as above stated, but provides a procedure whereby corporations can extend their corporate existence, said act being entitled as follows:

“An Act Amending Section 5916 of the Revised Codes of Montana, 1921, so as to Authorize Unliquidated Corporations whose Terms of Corporate Existence have Expired, or may Hereafter Expire, to Extend their Corporate Existence, and Validating All Acts of such Corporations and their Officers Between Dates of Expiration of Terms of Corporate Existence and Dates of Extension of their Corporate Existence, Which Would Have Been Legal and Valid if Done Before Expiration of Their Corporate Existence.”

It would appear that the framers of this act misconstrued section 5916 which they sought to amend, and acted upon the supposition that this section applied to corporations seeking to extend their corporate existence, and because of this we find that under the pretext of amending section 5916 the legislature has introduced a subject entirely foreign to the subject matter of that section.

In the case of *Miller vs. Hurford*, Neb., 9 N. W. 477, the court was confronted with an analogous situation, except that the title of the amending act did not set forth the subject matter of the amendment as was done in this instance, and in discussing the legality of the attempted amendment the Nebraska court said:

“Our constitutional provision, that ‘no bill shall contain more than one subject matter which shall be clearly expressed in the title’ is but making inviolable the rule governing legislative bodies that ‘no proposition or subject different from that under

consideration shall be admitted under color of amendment.' Experience has shown that in the absence of constitutional restrictions the rule at times is liable to be overthrown, and objectionable and pernicious legislation is the result. To guard against this evil our constitution prohibits more than one subject being embraced in a bill, and, while this provision has sometimes been attended with inconvenience, as in case of a revision of the laws, it is a safe guard against corrupt or improvident legislation, and its effect has been to simplify legislation and place every bill upon its true merits, but if, under the pretext of amending a section, a subject entirely foreign to the subject matter of the section to be amended can be introduced, this barrier will be entirely broken down, and the constitutional guaranty in effect destroyed."

The conclusions of the Nebraska court are equally applicable to the amendment in question, and while it might be contended that the subject matter of this amendment is fully expressed in the title, yet the fact remains that the subject of the amendment is not germane to the subject of the original act, and since it was introduced under the guise of an amendment the title is misleading and contravenes the requirements of the constitution. (See also 36 Cyc. par. C, page 1028.)

For the foregoing reason it is my opinion that chapter 7, supra, is unconstitutional and void, and therefore section 5926 is not repealed by this act nor does the same have any effect whatever upon the provisions of chapter 38, laws of 1931, which now provides a procedure to be followed by corporations in the extension of their corporate existence.

Very truly yours,

L. A. FOOT,

Attorney General.