Capital Stock—Corporations—Building and Loan Corporations—Fees.

Subdivisions 3 and 4 of section 145, R.C.M. 1921 construed. Fees charged a building and loan association to increase its capital stock should be computed as though it were a new instrument and without regard to any fees formerly paid for filing its articles of incorporation.

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

December 6, 1931.

My dear Mr. Harmon:

You have submitted to me for an opinion your files relative to the proper fee to be charged the Glendive Building and Loan Association for filing its certificate of increase of capital stock. The Glendive Building and Loan Association, a corporation, having an authorized capital stock of $500,000, filed its certificate to increase its capital stock from $500,000 to $750,000. The question is the amount of the fee to be charged on the increase of $250,000 capital stock. The fee as determined by you is as follows:

$100,000 of increase at $1.00 per $1,000	$100.00
$150,000 of increase at .80 per $1,000	120.00
Certificate of increase	3.00
Total	$223.00

The Glendive Building and Loan Association has tendered you its draft for $103.00 in full for the filing of the certificate. This is determined by allowing 40c per $1,000 for the increase and $3.00 for the certificate of increase.

The determination of this question depends entirely on the construction to be given to subdivisions 3 and 4 of section 145, R.C.M. 1921, which are as follows:

"3. For issuing each certificate of incorporation and each certificate of increase of capital stock, three dollars.

"4. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

"Amounts up to one hundred thousand dollars, one dollar per thousand dollars.

"Additional from one hundred thousand dollars to two hundred and fifty thousand dollars, eighty cents per thousand dollars.

"Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, sixty cents per thousand dollars.

"Additional from five hundred thousand dollars to one million dollars, forty cents per thousand dollars.

"Additional over one million dollars, twenty cents per thousand dollars."

It is contended by the Glendive Building and Loan Association that it paid fees on $500,000 of its capital stock at the time its original articles were filed and since its original certificate of incorporation was issued, filed and recorded it should only be required to pay fees on $250,000 increase at the rate of 40c per $1,000 or a total of $100, which, with the $3.00 fee for filing certificate, would make the total fee required to be paid $103. In other words, it is contended that the fee should be computed in exactly the same manner as though the articles of incorporation were being presented for filing for the first time, in which case after computing the fees to be paid on the first $500,000 the fees on the next $250,000 would be computed at the rate of 40c per $1,000.

Looking at subdivisions 3 and 4 it will be found that the language is practically the same. Subdivision 3 fixes the fee for issuing "each certificate of incorporation and each certificate of increase of capital stock," while subdivision 4 fixes the fees to be paid for recording and filing "each certificate of incoporation and each certificate of increase of capital stock." Under subdivision 3 each instrument is treated and regarded as a separate and distinct instrument, the fee being fixed for issuing the certificate of incorporation, and the fee then being fixed for issuing the certificate of increase without any regard to the fee theretofore paid for issuing the original certificate of incorporation.

So, under subdivision 4 the fees are fixed without any regard to the relationship between the two instruments, the fees being first fixed for recording and filing the certificate of incorporation, and the fees then being fixed for recording and filing the certificate of increase without any regard to the fees theretofore paid for recording and filing the original certificate of incorporation. It is difficult to see how the fees for recording and filing each instrument could have been fixed any more definitely and certainly than they have been fixed by subdivision 4.

Construing a Texas statute fixing the fees for filing articles of incorporation, amendments, and certificates of increase of capital stock, the supreme court of that state used certain language which is appropriate here:

> "On the other hand, it is but just and equitable whenever a corporation organized for profit effects an amendment which increases its capital stock, that it should pay the additional taxes for such increase, just as though it had filed an original charter, with the same amount of capital stock as the increase. Any other rule would be liable to abuse, and enable corporations of the character of this under consideration, to evade the statute by filing a charter with a capital stock of $100,000.00 and then in a short time thereafter filing an amendment greatly increasing the amount. It is evident that such was not the intention of the legislature. The reasonable and equitable rule upon the filing of an amendment is to charge for the amendment the fixed fee as though an original charter; and in case the amendment adds to the capital stock of the corporation, to charge the same additional fee for such increment as would be charged for an original charter with a capital stock of the amount. This is our construction of what the legislature intended by the statute in question, and it is not inconsistent with its terms." (St. Louis S. W. Ry. of Texas v. Tod, Sec'y of State, 64 S. W. 773.)

The language used by the supreme court of South Carolina in construing certain statutes of that state is also appropriate:

> "Construing the two sections together, we think it is clear that the purpose was to require the same fees for an increase of capital stock as upon the issuance or renewal of a charter, said fees being based upon amount of the increase. The increase being $1,000,000, the fees demanded by the Secretary of State were correct, as follows:
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> "On the first $100,000 of increase 1 mill.....$100.00
> On second $900,000 of increase ½ mill..... 450.00
>
> Total fees on capital stock.....$550.00
> Recording amendment 2.50
>
> $552.50
>
> "It is true, as contended by appellant, that this construction would require a corporation increasing its capital stock from

$1,000,000 to $2,000,000 to pay more fees than would be required of a corporation originally chartered for $3,000,000; but this is not unreasonable, as there is a difference between issuing an original charter alone and issuing a charter and thereafter amending or enlarging the same. On the other hand, the construction contended by appellant would require a smaller corporation increasing from $100,000 to $1,000,000 capital stock to pay nearly twice as much as a larger corporation increasing from $1,000,000 to $2,000,000 capital stock, thus discriminating in favor of the larger corporation against the smaller for substantially the same service or benefit conferred. Equality is preserved by applying the schedule of fees to the 'increase' of capital stock, just as if the amount of such 'increase' constituted the whole capital stock. Such construction, we think, the terms of the statute require."

Identical facts with those here presented were before the third judicial district court for Powell county in the case of Powell Building and Loan Association vs. O. H. Junod, State Treasurer, and decided adversely to the building and loan association which was making the same contention as the Glendive association is making here. The case was never appealed and the question has not been presented to the supreme court.

The case of State ex rel. Home Building and Loan Association vs. Rotwitt, 17 Mont. 536, referred to in the note to section 145 of the political code, does not touch the question here involved. Neither was this question suggested in the case of Missouri River Power Co. vs. Yoder, 41 Mont. 245, quoted from by counsel for the association in this case. There the fee was computed as it has been here.

It is therefore my opinion that the fee to be charged the Glendive Building and Loan Association should be computed in the manner in which you have computed it, that is, as though it were a new instrument and without regard to any fees formerly paid for filing its certificate of incorporation.

Very truly yours,

L. A. FOOT,
Attorney General.