

**Opinion No. 149****Corporations — Articles of Incorporation—Amendment—Secretary of State  
—Capital Stock.**

HELD: The Secretary of State is not vested with any discretion but must accept for filing a certificate, fair on its face, of the proceedings of a corporation, which resulted in its articles of incorporation being amended so as to increase its capital stock, even though extraneous investigation by him apparently discloses that the actual capital paid in amounts only to \$750.00.

April 11, 1933.

You have asked us whether or not under the provisions of Chapter 33, Laws of 1931, you are vested with any discretion in accepting for filing a certificate of the proceedings of a corporation which resulted in its articles of incorporation being amended so as to increase its capital stock by authorizing the issuance of one thousand shares of preferred stock of the par value of \$100.00 each, where extraneous inves-

tigation on your part has apparently disclosed that the actual capital paid in amounts to only \$750.00.

A close examination of the certificate in question satisfies us that the proceedings were regular and that the provisions of Chapter 38, Laws of 1931, were fully complied with. What, then, may the Secretary of State do under such circumstances? The general rule is that he is charged with the duty of accepting and filing the certificate when it shows on its face that everything the statute requires has been done. In other words, his duty in the matter is controlled by the relevant law of the state and not by his own discretion. Indeed, the remedy by mandamus is available against him where his duty to file is clear. (State v. Rotwitt, 17 Mont. 537; Mohall Farmers' Elevator Co. v. Hall, 176 N. W. 131; State v. Benson, 128 Atl. 107; State v. Taylor, 44 N. E. 513; California Tel. Co. v. Jordan, 126 Pac. 598; 7 Fletcher's Cyclopedia of the Law of Corporations, Sec. 3722; 38 C. J. 666, 667; note 52 L. R. A. (N. S.) 436.)

As the case of State v. Rotwitt, above, is entirely in point the discussion may with propriety end here. We merely desire to add, however, that the clause which you quote from Section 1 of Chapter 33 is intended evidently to limit the authority of a corporation to issue preferred stock and not to confer visitorial power on the Secretary of State.

We accordingly advise you to file the certificate.