

capital stock employed within the State as shown by reports required of said chapter annually?"

After foreign corporations are granted permission to do business in Montana, they are subject to the same control and are granted the same rights and privileges as domestic corporations. (Section 6659, R. C. M. 1921; Prudential Insurance Company of America v. Cheek, 259 U. S. 530; 66 L. E. 1044; Rv. Express Agency v. Comm. of Va., 282 U. S. 440, 75 L. E. 450; National Savings & Loan Association v. Gillis, 35 Fed. (2) 386; 14A C. J. 1250), except certain matters of control relating to interstate commerce, and corporations classed as an "agency of the National Government", which are not pertinent to the questions involved in the proposition you submit. In such excepted matters the state cannot interfere.

Domestic corporations are required to pay the excise or license fee on their authorized capital stock. (Section 145 R. C. M. 1921); foreign corporations on the amount of capital employed in this state. (Chapter 169, Laws 1931; Chicago etc., R. R. Co. v. Harmon, 89 Mont. 1). Domestic corporations when capital is increased, pay on the increased portion only. To apply the law without discrimination to a foreign corporation, when the annual report of the foreign corporation shows an increase in the capital employed in Montana, the foreign corporation must be charged the license fee on the increased portion of capital only. To apply a different method would be to deny to the foreign corporation the equal protection of the law.

You further state that the Great Western Sugar Company entered Montana February 16, 1916, and has remitted fees with its annual reports based upon the license fees fixed by the old law, Chapter 37, 1915 Laws, without regard to the increased fees provided for by Chapter 169, Laws of 1931. In this connection your attention is called to Sections 2 and 3, Article XV of our Constitution, which are as follows:

"Section 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory cor-

Opinion No. 177

Corporations—Foreign Corporations — Licenses—Fees—Capital Stock, In- crease of.

HELD: Foreign corporations may be and are required to pay a license fee upon the increased portion of capital stock employed within the state as shown by the annual reports of the corporation and as provided by Section 4 of Chapter 169, Laws of 1931.

April 24, 1933.

You have submitted the following for an opinion from this office: "May I request at your early convenience, your construction upon Section 4 of Chapter 169, Laws of 1931, relating to the fee which shall be assessed foreign corporations upon increased proportion of

porations as are or may be under the control of the state; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; provided, that any such laws shall be subject to future repeal or alteration by the legislative assembly."

"Section 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state."

The laws in effect when any corporation is incorporated are read into and made a part of its charter. *Allen v. Ajax Mining Co.*, 30 Mont. 490; *Barth v. Pock*, 51 Mont. 418; 14 C. J. pp. 183-184. There is no contractual right arising between the state and any corporation authorized to do business in the state that prevents the state from increasing the license charge that may be imposed. The reserve power to amend corporate charters prevents the charter from becoming a contract between the state and the corporation. *In re Mt. Senai Hospital*, 164 N. E. 871, and many others.

We are therefore of the opinion that you are authorized to charge the Great Western Sugar Company, and any other foreign corporations, showing an annual increase in capital employed in Montana, the fees provided by the 1931 law on the increase as shown by their annual reports.