

ceedings reducing the capital stock of the Citizens State Bank of Choteau, Montana, from \$50,000 to \$30,000 and reducing the number of shares of stock of said bank. The certificate of the above proceedings discloses that the notice of stockholders meeting held on November 3, 1933, was published in the Choteau Acantha on September 28, October 5, October 12, October 19, October 22 and November 2, 1933 and that such notice was mailed to the stockholders on September 27, 1933.

Section 17, Chapter 89, Laws of 1927, pertaining to the procedure to be followed for diminishing the capital stock of a bank, provides: "* * * It shall be the duties of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence at least six weeks previous to the day of the meeting. * * *"

"A week consists of seven consecutive days." (Section 4280, R. C. M. 1921.) Six weeks would necessarily consist of forty-two days. Forty-two days previous to November 3, the date of the meeting, exclusive of the day of mailing, would reach back as far as September 21, which would be the last day mailing could be made in order to allow for the specified time. Since the notices were not mailed until September 27, or only thirty-six days prior to date of meeting, six weeks did not elapse between the date of mailing and the date of the meeting. Since the statute was not complied with, it is my opinion that the proceedings for the reduction of the capital stock are not effective.

The statute also requires publication of the notice "six successive weeks". This undoubtedly means six weeks or forty-two days prior to the meeting. This requirement, in my opinion, does not have reference to the number of insertions in the paper but to the time notice shall be given, that is, six weeks or forty-two days. The statute specifies the number of weeks—not the number of times the notice shall be published. Since only thirty-five days elapsed between the

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Banks and Banking—Capital Stock, Reduction of—Stockholders Meet- ing, Notice of.

HELD: Section 17, Chapter 89, Laws of 1927, requires forty-two days notice between date of mailing, as well as first publication of notice, and the date of stockholders' meeting.

November 23, 1933

You have submitted for my examination and approval certificate of pro-

date of the first publication and the date of the meeting the requirement of the statute was not met.

We call attention to the case of *Garry v. Martin*, 70 Mont. 587, 227 Pac. 573, where a similar question was discussed by our Supreme Court. The reasoning of the court in that case, in my opinion, would be applicable. The rule is well stated in a Nebraska case, *State v. Hanson*, 80 Neb. 724, 115 N. W. 294: "Where the time mentioned by the statute expresses the duration of the notice, the same must be published for and during the time mentioned. Where, however, the time mentioned indicates only the number of times the notice is required to be published, it is satisfied if the notice is published the number of times mentioned." (See also *Scilley v. Red Lodge Rosebud Irrigation District*, 83 Mont. 282, 272 Pac. 543.)

As stated in the *Garry* case the subject of the publication of notice has given the courts much trouble. Even though there may be some doubt as to whether or not the publication of the notice was sufficient, there can be no doubt that the mailing of the notice did not meet the requirement of the statute. In order that there may not be any question in case the procedure should be gone over. I would suggest that at least forty-two days intervene between the date of the publication, as well as the date of the mailing, and the date of the meeting, and also that there be seven publications.