

of incorporation and in amendments to articles of incorporation which amend the articles in that respect.

August 25, 1934.

In your letter to me of recent date you requested my opinion on the question of whether or not an amendment to the articles of incorporation of the Santa Rita Oil and Gas Company, which in part is as follows: "That the number of directors or trustees of this corporation shall not be less than three nor more than seven," sufficiently complies with the law.

Section 5905, Revised Codes 1921, as amended by section 1 of Chapter 35, Laws of 1931, provides:

"Articles of incorporation must be prepared setting forth:

"1. The name of the corporation;
* * *

"5. The number of its directors or trustees, which shall not be less than three nor more than thirteen * * *."

Section 5918, Revised Codes 1921, as amended by section 1 of Chapter 38, Laws of 1931, provides:

"Any corporation organized under any of the laws of the State of Montana * * * may * * * amend its articles of incorporation by changing the * * * number of directors * * *."

In this state, corporations are organized under the general laws, and are therefore creatures of statute, and can be brought into existence only by substantial compliance with statutory provisions. The statute is in the nature of a general grant of the right to exercise corporate franchises to such persons as may comply with its terms. The instrument called "articles of incorporation" constitutes the evidence of the acceptance of the terms and conditions contained in the statute. The requisites of the instrument are clearly stated in section 5905 as amended. If any one of these is omitted, such omission is a fatal defect and no de jure right to exercise corporate franchises exists. The number of directors must, therefore, be stated definitely because the statute so requires. (*Bates v. Wilson*, 24 Pac. 99; *Merges v. Altenbrand*, 45 Mont. 355; *Martin v. Deetz*, 36 Pac. 368; *In re Daughters of Israel Orphan Aid Soc.*, 210 N. Y. S. 541; 1

Opinion No. 600

Corporations—Articles of Incorporation, Amendment of—Directors, Number of—Secretary of State.

HELD: The statutes require that the number of directors of a corporation be stated definitely both in the articles

Fletcher's Cyclopedia Corporations, sec. 145; 14 C. J. 118-120.)

Unquestionably the requirement that the number of directors to be definitely set forth is as imperative in the case of an amendment like the one in question as it is in the case of the original articles of incorporation. The statute can be given no other sensible meaning.