

Opinion No. 131.

Foreign Corporations—Secretary of State—Fees Increase of Capital Stock—Continuation of Corporate Existence.

HELD: The Secretary of State must charge foreign corporations, for increase of capital stock, a fee based on portion of such increase as is applicable to the State of Montana.

2. A like portion of fee must be charged such corporations on filing certificate of continuation of corporate existence.

August 4, 1937.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

Dear Mr. Mitchell:

You ask our interpretation of Chapter 31 of the Laws of Montana of the 1937 Session, in so far as it relates to the filing of amendments to articles of incorporation by a foreign corporation.

Fully cognizant of the decisions in the case of *J. I. Case Threshing Machine Company v. Stewart*, 60 Mont. 380, and *General Electric Company v.*

Stewart, 60 Mont. 387, it is our opinion that the recent changes in our law in reference to fees of a foreign corporation have taken into consideration the decisions in these two cases. The striking point in the cases was the question as to whether they were interstate or intrastate, or both, and the court has consistently held that the state has no jurisdiction in matters beyond the State of Montana, so that we would not have a great deal to say or do respecting interstate matters, and therefore Chapter 31 of the Twenty-fifth Legislative Session of 1937 made provision (Section 4) that the amount of capital invested in the state must be shown in its application to do business within the state and we then tax upon that portion of the capital of the foreign corporation as is represented in the State of Montana.

As to the matter of amendments and increase of capitalization, while you say you have heretofore, and particularly since the decision in the two cases mentioned, simply charged a nominal fee of \$1.00, we are of the opinion that with the enactment of Chapter 31 of the Laws of 1937, you are justified and should make the same proportionate charge in the amending of the articles of incorporation of a foreign corporation and the increase of its capital, requesting of such foreign corporation that its application show the amount of increase applicable to the State of Montana, which, in other words means to say that the foreign corporation shall pay on its amended articles in the same way as it pays on its original articles, that is, pro rata, governed by the amount of capital invested in the state. Section 6654 R. C. M. 1935 provides:

“Every corporation enumerated in section 6651 of this code shall annually and within two months from the first day of April of each year make a report, which shall be in the same form and shall contain the same information as required in the statements mentioned in said section, and, in addition, shall contain the following information:

“1. The gross amount of its business in the State of Montana for the preceding year.

“2. The amount of money actually expended in transacting its business in the state of Montana for the preceding year.

"3. The net profits on its business transacted in Montana for the preceding year.

"Said report shall be filed in the office of the county clerk of the county wherein the principal place of business of such corporation is carried on and the duplicate thereof in the office of the Secretary of State."

This keeps the office of the secretary of state constantly informed as to the business done in the State of Montana, and therefore the capital invested. The last word of our Supreme Court affecting this matter will be found in the case of *Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Harmon*, 89 Mont. 1. Judge Matthews, after reviewing the various legislative enactments, decided that a statute referring to foreign corporations doing business within the State of Montana, which provides for filing fee, in conformity with the amount of capital invested in the state, is perfectly valid and constitutional, and it is our opinion that Chapter 31, Session Laws of 1937 was enacted to meet just this contingency, and that it is valid and constitutional.

So then, in substance, we mean to say that you are entitled to place a fee upon the filing of certificates of increase of capital stock or certificates of continuance of corporate existence of foreign corporations upon such portion of the increase of the capital stock as is applicable to the State of Montana.