

articles of incorporation. One of the amendments proposed affects the board of directors. The original article now proposed to be amended reads as follows:

'5. The number of its directors shall be Four, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified are:

'Names. Residences.'

The amendment now proposed to be adopted is as follows:

'Resolved, that the Articles of Agreement be amended by striking out paragraph five and inserting in lieu thereof the following:

'The Board of Directors shall consist of such number of shareholders, not less than three (3) nor more than eleven (11) as from time to time shall be determined by a majority of the votes to which all shareholders are at the time entitled.'

Will you kindly advise us whether or not in your opinion the proposed amendment complies with our Montana statutes?

Can Section 6014 R. C. M. 1935 be construed so as to permit a Montana State Bank to increase or decrease the number of its Board of Directors without amending its Articles of Incorporation?"

State banks organized under the provisions of the Bank Act of Montana are corporations. (Sections 6014.1, 6014.2, 6014.3, 6014.10 R. C. M. 1935. Subsequent sections also refer to such banks as corporations.) This office has heretofore held that the general corporation statutes of Montana require that the number of directors of a corporation be stated definitely both in the articles of incorporation and in amendments to the articles of incorporation which amend the articles in that respect. (Vol. 15 Official Opinions of Attorney General, page 411.) State Banks, however, are organized and incorporated, not under the general corporation laws, but under the provisions of the Bank Act. (Sections 6014.1 to 6014.153, R. C. M. 1935). For that reason it becomes necessary to determine what special provisions are contained in that Act.

Opinion No. 6.

Banks and Banking—Directors, Change in Number of Articles of Agreement, Amendment of—Corporations.

HELD: 1. The number of directors of a state bank must be stated definitely in the articles of agreement.

2. Under the provisions of Section 6014.23 R. C. M. 1935, the number of directors of a state bank may be changed without amendment of the articles of agreement, but the number must be definite.

3. The articles of agreement of a state bank may be amended under the provisions of the general corporation laws to increase or diminish the number of directors.

December 14, 1936.

Mr. S. L. Kleve
Superintendent of Banks
The Capitol

Dear Mr. Kleve:

You have presented the following facts and questions for my opinion:

"A certain Montana State Bank has submitted to this department for approval a set of amendments to its

Section 6014.10 R. C. M. 1935, provides that the Articles of Agreement (the equivalent of articles of incorporation under the general corporation laws) shall set forth "5. The number of the board of directors, and the names of those agreed upon for the first year." Section 6014.14 provides that "the affairs of the bank shall be managed by a board of directors, not less than three or more than eleven in number * * *." Section 6014.20 R. C. M. 1935 provides that "every bank now organized and existing, or which may hereafter be organized, may, upon approval of the superintendent of banks * * * increase or diminish the number of trustees or directors in the manner hereinafter provided." Section 6014.23 R. C. M. 1935, provides:

"A state bank may increase or diminish the number of its directors at any regular annual meeting, or at any special meeting called and noticed for such purpose, of the stockholders of said bank; provided that the number of directors shall not at any time be less than three (3) nor more than eleven (11). The matter of changing the number of directors may be submitted to any annual meeting of the stockholders without special notice and if two-thirds (2/3) of the total number of shares of the bank shall vote in favor of such change, the result of the vote on the proposal to change, shall be certified to the state superintendent of banks for his approval or disapproval. If he shall approve the proposed change and signify the same in writing, the change shall then be effective, but if he shall disapprove the proposition to make said change, his action will be final and conclusive. In case the state superintendent of banks shall approve of a change to increase or diminish the number of directors and shall so notify the officers of the bank the order of approval shall be filed with the records and papers of said bank, and the number of directors shall from the date of said approval by the superintendent of banks, be in accordance with the vote of the stockholders as herein provided. In any event the superintendent of banks must, within thirty (30) days from the receipt of any application, notify the officers of the bank in writing of his action upon the application."

Section 6014.14, in declaring that the affairs of the bank shall be managed by a board of directors, not less than three nor more than eleven in number, and Section 6014.23, in authorizing a change in the number of directors, provided that the number of directors shall not at any time be less than three nor more than eleven, add nothing to the effect of Section 6014.10 which requires the articles of agreement to state the number of directors of the bank. All the provisions taken together mean this, and nothing more: That each state bank must have a fixed and definite number of directors, not less than three nor more than eleven in number. (Porter v. Lassen County Land & Cattle Co., 127 Cal. 261, 59 Pac. 563.)

The number of directors of a state bank must, therefore, be stated definitely in the articles of agreement. (Vol. 15, Official Opinions of Attorney General, page 411; 14 C. J. 141, 142.)

The question now arises whether any different considerations apply where a change in the number of directors is made, as authorized by the Bank Act, subsequent to the incorporation of the state bank.

Apparently there are two methods, as we shall presently develop, of accomplishing a change in the number of directors of a state bank.

Section 6014.20, as is shown above, provides that the number of directors may be changed if the change is approved by the state superintendent of banks. Section 6014.23, quoted in full above, provides the procedure to be followed. The proposal must be submitted at a proper meeting and carried by the prescribed vote. If and when it is so carried the result must be certified to the state superintendent of banks for his approval or disapproval. If he approves the change and so notifies the bank "the order of approval shall be filed with the records and papers of said bank, and the number of directors shall from the date of said approval by the superintendent of banks, be in accordance with the vote of the stockholders as herein provided." Nowhere in these two statutes, nor in any other sections of the Bank Act, is it required that the change in number of directors be embodied in an amendment to the articles of agreement, or that any notice or certificate of such change be filed with the office

in which the articles of agreement are required to be filed. We can come to no other conclusion than that the legislature intended the change to take effect without requiring public notice by filing, except for filing with the records and papers of the bank, and to take effect immediately upon receipt by the state bank of the "order of approval" of the state superintendent of banks. That conclusion is strengthened by an examination of earlier statutes which are so obviously similar (in many instances word for word) that they must have been used as guides in drawing up the present Bank Act. I refer especially to Sections 6014-6034, R. C. M. 1921, which were repealed when the present legislation was enacted. The parallel sections relating to the number of the board of directors and to the change of number of the board of directors are:

R. C. M. 1935	R. C. M. 1921
6014.10	6021
6014.14	6025
6014.20	6032
6014.21 (provisions)	6033

of 1921 section relating to directors are omitted)

6014.22 (provisions 6034

of 1921 section relating to directors are omitted)

6014.23 (very 6026

materially different from 1921 section.)

Under the old Bank Act of 1915 as amended, as it appears in the Revised Codes of 1921, it was necessary to file a certificate of proceedings, showing a compliance with the provisions of the act, with the county clerk and recorder and with the secretary of state. Thereupon the change in number of directors became effective. (Section 6034 R. C. M. 1921.) Under the provisions of the present Bank Act it is only necessary to file the order of approval of the state superintendent of banks with the records and papers of the bank. The change becomes effective upon approval. (Section 6014.23 R. C. M. 1935.) Neither Act provided that a change in the number of directors must be embodied in an amendment to the articles of agreement. The legislature might have considered the designation of the number of directors in the articles of agreement unnecessary and have failed to provide therefor. (14 C. J. 141.) It might have been

provided by statute that the by-laws should determine the number of directors. (14 C. J. 360.) It follows, then, that the legislature may permit a change in that respect without requiring that the change be made by an amendment to the articles.

There is, however, no authority to change to an indefinite number of directors. Section 6014.20 R. C. M. 1935 permits state banks to "increase or diminish the number of trustees or directors in the manner herein provided." Section 6014.23 R. C. M. 1935 provides that "a state bank may increase or diminish the number of its directors * * *." "Increase" is defined "to become greater in size, quantity, number," etc.; "to grow; augment; advance; wax;—opposed to decrease." (Webster's New International Dictionary; 31 C. J. 408, 409.) "Diminish" is defined "to make smaller or less in any manner; to reduce in bulk, amount, or degree; to lessen;—opposed to augment or increase." (Webster's); and "to make less, but not utterly to wipe out; thus where one thing is deducted from another the larger amount is diminished to that extent." (18 C. J. 1041.) These words and their definitions preclude the idea of a change to an indefinite number. Had the legislature intended to confer such a power it could easily have done so by apt words.

It is now necessary to determine whether or not a change in the number of directors may be made by amendment of the articles of agreement. The Bank Act makes no provision for amendments of any nature or for any purpose to the articles of agreement.

As was pointed out above, state banks organized under the provisions of the Bank Act are corporations. The organization of private corporations for the purpose of "the transaction of any banking business" is expressly authorized in the general corporation laws. (Subdivision 14 of Section 5903, R. C. M. 1935.) The general corporation laws provide: "Any corporation organized under any of the laws of the State of Montana heretofore or hereafter, * * * may, in the manner herein provided, amend its articles of incorporation by changing the * * * number of directors, * * *." (Section 5918, R. C. M. 1935.) Where the Bank Act is silent it is only reasonable to apply the general corporation laws. To do

so is, in fact, mandatory under the provisions of Section 6012, R. C. M. 1935, which provides:

“The provisions of sections 5900 to 6013 of this code are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in said sections, in which case the special provision prevails.”

Necessarily such an amendment must definitely state the number of directors when that is the subject of the amendment. (Vol. 15, Official Opinions of Attorney General, page 411.)

It hardly seems necessary to add that the special provisions of the Bank Act, relating to submission of proposed changes in corporate organization of state banks to the superintendent of banks, are in nowise affected by the above-quoted section, but are in fact protected by it.