

Opinion No. 185.

**Banks and Banking—State Banks—  
Continual Succession—Method  
of Obtaining.**

HELD: State banks organized under Section 6021, R. C. M., 1921, or prior to the enactment of 6014.10, R. C. M., 1935 (Chap. 89, Laws 1927), may, upon authority of the stockholders, obtain continual succession by following the method set out in said Section 6014.10.

December 29, 1939.

Hon. W. A. Brown  
Superintendent of Banks  
The Capitol

Dear Mr. Brown:

You have submitted the following:

“Section 6014.10 provides for the organization and incorporation of state banks, and contains this provision:

“‘Provided, that any bank, trust company or investment company now existing, may at any time, within the period limited for its duration, elect to avail itself of the right of continual succession herein given, by filing its intention so to

do in the office of the county clerk and recorder of the county wherein such corporation is located and a copy thereof with the secretary of state, by paying the legal filing fees therefor. No such corporation shall be allowed to increase its capital stock by such filing without complying with the provisions of this act and paying the legal filing fees as in such cases otherwise provided.'

"It will be observed that this section does not prescribe any procedure or specifically require action by either the stockholders or directors, in connection with an election to provide continual succession for the bank.

"The question has arisen as to what, if any, action should be taken before the bank may elect to come under the provisions of the Act. It has been my opinion that the same must be made by action of the stockholders; when such action is authorized, then officers would have the power to file the necessary papers as provided for in Section 6014.10.

"Will you be good enough to advise me as to what action, if any, should be taken by the stockholders or board of directors of the state banks to effect an election to come under the provisions of the Act?"

All state banks organized under Section 6021, R. C. M., 1921, or before the enactment of Chapter 89, Laws of 1927, provide by their articles of agreement that their corporate existence shall continue for a definite limited period not exceeding fifty years. Said Chapter 89, Laws of 1927 (Section 6014.10, R. C. M., 1935), provided for "continual succession" for all state banks organized after its enactment and provided a method by which state banks previously organized might obtain "continual succession." The legislature might have said that this could be done by any bank amending its articles of agreement but it did not do so. Instead, it did say that any state bank at any time within the period limited for its duration could "elect to avail itself of the right of continual succession herein given, by filing its intention so to do in the office of the county clerk and recorder of the county wherein such corporation is located and a copy thereof with the Secretary of State, by paying the legal

filing fees therefor." Here we have a specific statement of what is necessary.

No doubt the legislature wished to make it as easy and simple as possible rather than to require the form of procedure of amending the articles of incorporation. We agree with you, however, that such a fundamental change in its articles of agreement pertaining to the corporate existence, should be authorized by the stockholders; that being done, the procedure specified in the part of the statute we have quoted may be followed.