

corporator in the formation of another corporation.

March 13, 1940.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

Dear Mr. Mitchell:

Your letter of March 5th requests an opinion upon the following question:

“May an existing corporation act in the capacity of a natural person as an incorporator in the formation of another corporation?”

The law pertaining to the formation of corporations is a special statute. Section 5903, R. C. M., 1935, sets out the purposes for which private corporations may be formed and the said section ends as follows:

“No corporation must be formed for any other purpose than those mentioned in this section.”

Nowhere in the said section do we find authority for an existing corporation to act as an incorporator of another corporation despite the fact that Section 16, R. C. M., 1935, and Section 10713 indicate that wherever the word “person” is used in the statutes it shall include corporations. Section 5902, R. C. M., 1935, reads as follows:

“Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this chapter.”

It is our opinion in answer to your question that a private corporation cannot act as incorporator in the formation of another corporation and we base it largely upon Section 8776, which reads as follows:

“Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, **except where a contrary intention plainly appears.**”

It plainly appears from the context of the corporation law that the intention of the legislature was not to grant to corporations the right to act as incorporators in a corporation. Section 5907 plainly bears this out and reads as follows:

Opinion No. 215.

Corporations.

HELD: A corporation in existence cannot, as a corporation, be an in-

“The articles of incorporation must be subscribed by three or more persons, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.”

This would naturally preclude a corporation, as a corporation, for the reason that the only acknowledgment a corporation could make would be through an attorney in fact. We quote from 14 C. J., Sec. 81, p. 104:

“A corporation cannot, of course, be one of its own members, and it cannot, either in its own name or in the name of another as agent or trustee for it, subscribe for shares of its own stock * * *.”

Of course, there are instances wherein corporations do take up their own stock, but in that event the stock is merely held in suspension and subject to the right to issue or to retire the same. It cannot be voted at corporate meetings.