

Section 15-1701 of Chapter 17, Revised Codes of Montana, 1947, prescribes the steps necessary to be taken by a foreign corporation before it can carry on business in the state. After providing that the foreign corporation file in the office of Secretary of State, a duly certified copy of their charter, or articles of incorporation and a statement of facts under oath, the statute goes on to declare in subdivision (2):

“A copy of such charter or articles of incorporation, and such statement, duly certified by said secretary of state, shall be filed in the office of the county clerk of the county wherein its principal office or place of business in this state will be located. Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company.”

I agree completely with your conclusion, namely that the actual qualification of a foreign corporation to do business in the state is not completed until such time as the articles of incorporation and other prescribed papers are in fact actually filed with the county clerk of the county wherein the principal place of business is located; moreover, the Montana Supreme Court has substantiated this view.

In the case of *Manhattan Trust Co. v. Davis*, 23 Mont. 273, 58 Pac. 718, under statutory provisions similar to those set out above, the Court said: (p. 282).

“The law contemplates one filing with the Secretary of State, and one filing with the county Recorder of

Opinion No. 66

Foreign Corporations—Articles of Incorporation—Filing of Secretary of State—County Clerk—Doing Business in State

Held: In order for a foreign corporation or joint stock company, except foreign insurance companies and corporations otherwise provided for, to fully and properly qualify to do business within the state of Montana, it is necessary that articles of incorporation, or a duly certified copy of their charter, together with the statement of facts required by statute, be filed both with the Secretary of State and with the county clerk in the county wherein its principal office or place of business in this state is located.

February 14, 1952.

Honorable Sam W. Mitchell
Secretary of State
Capitol Building
Helena, Montana

Dear Mr. Mitchell:

You have requested my opinion as to whether a foreign corporation must file its articles of incorporation with the County Clerk and Recorder of the county where the principal place of business is located, as a prerequisite for complete qualification to do business within the state.

the county wherein the foreign corporation intends to carry on or transact business. *** The statute requires these filings before doing any business of any kind, nature, or description whatever, and imposes commencement, to do business in the state without having first filed the statements and certificates required." (emphasis supplied)

This case went on to state that it was not necessary to file in every county in which the foreign corporation did business, but only the county in which was located the principal place of business.

In the case of Powder River Cattle Co. vs. Commissioners of Custer County, 9 Mont. 145, 151, 22 Pac. 383, under a similar statute to Section 15-1701 (supra), the court held that the failure to comply with the statute prescribing the steps necessary to be taken prohibited the foreign corporation from carrying on business within the state.

Section 15-1701 (supra) was originally enacted in 1879 (Ap. p. Sec. 1, p. 8 Ex. 1, 1879) and required that all foreign corporations or joint stock companies "shall before doing business of any kind, nature, or description whatever within this Territory, file in the office of the Secretary of the Territory, and in the office of the county Recorder, of the county wherein they intend to carry on or transact business, a duly authenticated copy of their charter or certificate of incorporation, and also a statement to be verified by the oath of the president and secretary of such incorporation and attested by a majority of the Board of Directors, showing: etc. . . . (emphasis added). It was first amended by Section 1030 Civ. C. 1895, the amendment requiring a filing with the office of the Secretary of State and in the office of the county clerk of the county wherein they (all foreign corporations and joint stock companies) intended to carry on business, of the necessary articles, or charter and statement under oath.

Amended again in 1901 (Sec. 1, p. 151, L. 1901) the change did not effect the requirement of filing both with the Secretary of State and the county clerk; so too with the 1907 amendment (Sec. 1, Ch. 181, L. 1907) and with the

1921 amendment (Sec. 1, Ch. 264, L. 1921).

The last amendment to Section 15-1701 was in 1937. (Sec. 1, Ch. 31, L. 1937). The amendment did not eliminate or make unnecessary the long established requirement for filing both with the Secretary of State and the County Clerk. Although altering the statute in other respects, not material to this question, for our purposes it merely rearranged the wording so that the requirement for filing with the Secretary of State is found in the first paragraph and the filing with the County Clerk is found in the second. Where part of a statute is retained and carried forward into the new amendment, it is to be construed as having been the law from the time of its first enactment. (In re Wilson's Estate, 102 Mont. 178, 56 Pac. (2d) 733, 105 ALR 367). The carrying forward in the instant case raises no ambiguity as to the legislative intent on this question.

It has long been a familiar rule of statutory construction that a statute should be read as a whole and effect given to every part where possible. It is also a rule of construction that the plain and ordinary meaning of words must be made a first resort in determining the legislative intent. (State v. Bowker, 63 Mont. 1, 205 Pac. 961; McNair v. School Dist. No. 1 of Cascade County, 87 Mont. 423, 288 Pac. 188, 69 ALR 866).

From my study of the statute itself, its legislative history, and an interpretation of the ordinary meaning of the words contained therein, only one conclusion may be reached. It is therefore my opinion that in order for a foreign corporation or joint stock company, except foreign insurance companies and corporations otherwise provided for, to fully and properly qualify to do business within the State of Montana, it is necessary that articles of incorporation, or a duly certified copy of their charter, together with the statement of facts required by statute, be filed both with the Secretary of State and with the county clerk in the county wherein its principal office or place of business in this state is located.

Very truly yours,
ARNOLD H. OLSEN
Attorney General