

## Opinion No. 88

**Articles of Incorporation—Morris Plan Company—Legislative Intent—Omitted Words—Notice—Publication—Statutes—Sections 5-1301 to 5-1311, Revised Codes of Montana, 1947.**

**Held:** Where a statute provides "accompanied by proof of publication of notice as hereinafter provided", and the legislature has inadvertently omitted to provide further for such notice, the manifest intention of the legislature is shown and words can be supplied to carry out that intent.

When notice has been caused to be printed in a newspaper of general circulation in the locality in which the incorporators propose to do business, for a length of time which will adequately give those presumed to be interested information of the pro-incorporation, there has been a substantial compliance with the statute. One publication constitutes such notice.

May 22, 1952.

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

Dear Mr. Mitchell:

You have presented the following facts to me with a request that I issue an official opinion as to what notice is necessary in order to comply with the provisions for incorporating a "Morris Plan Company" under Chapter 109, Session Laws of 1925, now being Sections 5-1301 to 5-1311, Revised Codes of Montana, 1947.

"'A' desires to incorporate a 'Morris Plan Company', and Section 5-1302 provides, 'a certification of incorporation shall be executed and presented to the Governor of the state accompanied by proof of publication of notice as hereinafter provided'. I can find nothing in the act itself or the above sections which make any further reference to any notice or publication thereof."

A study of the Act shows that at no time has the legislature provided for

notice, although the Act reads as above stated, and has remained in that form since originally enacted in 1925.

It is apparent that it was the intent of the legislature to require notice of intent to incorporate as a condition precedent to the issuance of articles of incorporation for this type of a corporation, however, what specific notice they had in mind is impossible to ascertain. In the case of *State vs. District Court of Second Judicial District in and for Silver Bow County*, 83 Mont. 400, 272 Pac. 525, the court held:

“When the intention of the legislature can be ascertained from the statute, words may be modified, altered or supplied so as to compel conformity of the statute to that intention.” (Emphasis supplied)

By the wording of Section 5-1302, (supra) the intention of the legislature is manifest, a published notice must be given. It has been held that “‘notice’ is not a technical term, and, while it can have various meanings, the meaning given by the courts is to be controlled largely by the context purpose and intent of the enactment, and should receive reasonable interpretation with reference to subject with which it is applied.” (See, *Shimonek vs. Tillman*, 150 Okla. 117, 1 Pac. (2d) 154, at 159).

The problem remains, what is required to comply with the manifest intent that notice is a condition precedent to the issuance of articles of incorporation? In view of the legislative omission, it becomes necessary to determine what constitutes a reasonable notice in order to substantially comply with the incorporation procedure. Since there is no general law requiring notice of incorporation, I believe that whenever the incorporators cause notice to be published in a newspaper of general circulation in the locality in which the incorporators intend to do business, there has been a substantial compliance with the statute. Looking to the context and purpose of the Act, one publication should achieve this result.

It is therefore my opinion that in order to comply with the provisions of Section 5-1302 (supra) one publication will satisfy the requirement that the

incorporators exhibit proof of publication before a certificate of incorporation is executed by the Governor.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General