

Opinion No. 54.
Corporations—Foreign Corporations—
Corporate Names.

HELD: A foreign corporation may not do business in this state by any name other than that by which it is known in the state of its incorporation.

January 26, 1954.

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

Dear Mr. Mitchell:

You have asked my opinion upon the following question:

"If a foreign corporation may not be admitted to do business in the State of Montana because it has the same name as an existing corporation, may it be admitted under another name which is adopted for use in the State of Montana only, meanwhile continuing to do business in all other states under the original name?"

The Constitution of the State of Montana requires that foreign corporations shall be subject to all the limitations imposed upon domestic corporations of the same kind. Article XV, Section 11, provides:

"No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state."

The policy stated in this section is further borne out by Section 15-1709, R.C.M., 1947, which provides:

"All foreign corporations licensed to do business in the state of Montana shall be subject to all the liabilities, restrictions, and duties which are or may be imposed upon corporations of like character organized under the laws of this state, and shall have no other or greater powers."

Section 15-108, R.C.M., 1947, relating to the creation of domestic private corporations provides:

"Articles of incorporation must be prepared, setting forth:

1. The name of the corporation . . ."

Section 15-111, R.C.M., 1947, paragraph (2) provides:

". . . Thereupon the persons signing the articles and their associates and successors shall be a body politic and corporate **by the name stated in the certificate . . . provided, however, that no articles of incorporation shall**

be accepted and filed by the secretary of state which designate a name for the proposed corporation which is the same as that of any existing domestic corporation . . ." (Emphasis supplied.)

Section 15-807, R.C.M., 1947, which is part of the chapter prescribing the powers and duties of domestic corporations provides:

"Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law . . ."

It is clear from these sections of our corporation law that a Montana corporation must have a single name, sufficient to identify it and set it apart from all other corporations.

This requirement that a corporation have a single, clear and distinctive name has been adopted in this state as a necessary protection to other corporations and to the public. The generally accepted rule is stated in 18 C.J.S., Corporations, Sec. 167, p. 562, as follows:

"When a corporation is organized under a general law, the name stated in its charter or certificate of incorporation as required by the statute is its only proper name, and it cannot change its name without legislative authority or assume any other name and thus acquire several names by user or reputation."

Under this doctrine it has been held in some states that a change or abandonment of the name is an abandonment of the corporation itself. (See Cincinnati Cooperage Co. vs. Bate, 96 Ky. 356, 26 S.W. 538; Senn vs. Levy, 111 Ky. 318, 63 S.W. 776.)

In the case of Campbell vs. J. I. Campbell Co., 117 La. 402, 41 So. 696, an attempt was made to operate the same corporation in two different states under two different names. The Louisiana Supreme Court said:

"Under the law of its creation, as also under the law of Louisiana, the company was without legal capacity to engage in business anywhere under any other name than that by which it is established: the name of a corporation being as essential to its

existence as any other franchise conferred upon it . . . The proposition that a corporation, which, by the law of its creation, has a particular name, and as to its existence and business, is confined to certain counties in a particular state, can masquerade under another name, in foreign territory, and still preserve its identity and existence as a corporation, is untenable."

Our Constitution and statutes as quoted above explicitly prohibit foreign corporations from exercising powers and enjoying privileges not enjoyed by domestic corporations. The prohibition applies to the use of more than one name, and Section 15-1701, R.C.M., 1947, provides that the single name by which the corporation shall be known is the one contained in its articles of incorporation. That section provides in part:

"(1) All foreign corporations or joint stock companies . . . shall before doing business within this state, file in the office of the secretary of state of Montana, a duly certified copy of their charter, or articles of incorporation, and also a statement, verified by oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing:

"1. The name of such corporation and the location of its principal office or place of business without this state. . ."

This section clearly contemplates that the filing with the secretary of state shall be in the name by which the corporation is known in its place of incorporation.

It is therefore my opinion that it would be extremely misleading to the public to permit a foreign corporation to do business in this state by a name other than that by which it is known in the state of its incorporation and would be in violation of our Constitution and statutes.