

Opinion No. 22

CORPORATIONS; Non-profit corporations; powers of board of directors to amend or alter bylaws—SECTIONS 15-303 and 15-401, Revised Codes of Montana, 1947.

Held: Stockholders or members of a non-profit corporation or cooperative association may delegate authority to the board of directors to amend the bylaws to make provision for changing the number of directors, subject to the restriction imposed by Section 15-401, RCM, 1947. Without such delegation of authority the board of directors cannot amend the corporate bylaws.

August 23, 1961

Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Murray:

You have requested my opinion whether the stockholders or members of a non-profit corporation or co-operative association may grant

to the board of directors authority to adopt bylaws altering the number of directors.

Section 15-303, Revised Codes of Montana, 1947, provides in part:

"The written assent of the holders of two-thirds of the stock, or two-thirds of the members if there is no capital stock, shall be effectual to repeal or amend any bylaws, or to adopt additional bylaws. The power to repeal and amend the bylaws and adopt new bylaws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors."

Section 15-401, RCM, 1947 provides in part:

"The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen directors, . . ."

Opinion No. 223, Volume 18, Official Opinions of the Attorney General, interpreting Section 15-303, *supra*, then Section 5932, Revised Codes of Montana, 1935, held that:

"By virtue of this section I am of the opinion that the members of a co-operative association may delegate to the board of directors the power to alter or amend the bylaws of their association."

Thus, if the members or stockholders can delegate such authority to amend or alter the bylaws, and no prohibition being found in the present code as to a restriction on such delegation, other than the limitation as to number by Section 15-401, *supra*, it follows that, pursuant to Section 15-303, *supra*, two-thirds of the stockholders or members of a non-profit corporation may delegate authority to the board of directors to adopt, repeal or amend such bylaws for this specific purpose.

It is therefore my opinion that the stockholders or members of a non-profit corporation or co-operative association may delegate authority to the board of directors to amend the bylaws pertaining to the number of directors of the corporation, subject only to the limitation provided by Section 15-401, RCM, 1947. Unless the stockholders or members so delegate such authority, the board of directors cannot amend the corporate bylaws.

Very truly yours,
FORREST H. ANDERSON
Attorney General