

Opinion No. 21

CONSTITUTIONAL LAW, Corporations, Capital Stock; CORPORATIONS, Capital Stock, Increase of; Stockholders' meeting necessary; Sec. 15-1001, RCM, 1947; Article XV, Sec. 10, Montana Constitution.

HELD: Section 15-1001, R.C.M., 1947, as amended, does not authorize increase in capitalization as a corporate act that can be performed without a formal meeting of the stockholders.

September 20, 1963

Honorable Frank Murray
Secretary of State
Capitol Building
Helena, Montana

Dear Mr. Murray:

You ask whether a corporation can increase its capital stock without a stockholders' meeting held after notice.

The question arises by reason of the amendment to Section 15-1001, R.C.M., 1947, by the Thirty-eighth Legislative Assembly (Chapter 155, Laws of 1963). As amended the portion of the section pertinent to our inquiry reads:

“ . . . Provided, further, that any corporate act to be performed by the stockholders of a corporation may be performed by a resolution with the signed consent of all of the stockholders of said corporation (or their proxies or personal representatives), without a formal meeting of the stockholders being held therefor. Such resolution shall be placed in the minute book of the corporation.”

The decision to increase corporate capitalization, of course, is an act to be performed by the stockholders. However, I do not believe that the legislature intended that such action be accomplished by authority of the amendment to Section 15-1001, R.C.M., 1947.

Article XV, Section 10 of the Montana Constitution provides in part:

“The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days notice given in pursuance of law.”

This provision is mandatory (see Article III, Section 29).

The statute, as amended, does not meet the standards of Article XV, Section 10, of the Constitution, pertaining to notice and meeting.

Familiar canons of statutory construction direct us to interpret statutes in such a way as to uphold their constitutionality, if possible. Therefore, in view of the constitutional prohibition, I hold that Section 15-1001, R.C.M., 1947, as amended, does not authorize increase in capitalization as a corporate act that can be performed without a formal meeting of the stockholders.

Very truly yours,

FORREST H. ANDERSON
Attorney General