

VOLUME 32

Opinion No. 4

**STATUTES; Effective date, Montana Business Corporation Act—
Chapter 300, Laws of 1967.**

**HELD: Chapter 300, Laws of 1967, will become effective on December
31, 1968, and all of its provisions are inoperative for any pur-
pose until that date.**

June 8, 1967

Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Murray:

You have requested my opinion with regard to the following ques-

tion: "When do the provisions of Chapter 300, Laws of 1967 become effective?"

This chapter was introduced and passed as House Bill No. 383 and is entitled the "Montana Business Corporation Act." Your question is prompted by the following provisions of the act .

Section 136 states in effect that from and after July 1, 1967, all foreign and domestic corporations are to be governed by its provisions, subject to the following exceptions: Domestic corporations existing before July 1, 1967, are not subject to the provisions of the act until January 1, 1969, but may elect to do so before that date. Foreign corporations already authorized to conduct affairs in Montana before July 1, 1967, are not subject to the act until January 1, 1969, but they may also elect to come under its provisions prior to January 1, 1969. This section further provides that the existing provisions of Title 15 of the Revised Codes of Montana remain in effect until January 1, 1969, as to existing corporations which do not elect to come under its provisions, but are inapplicable otherwise. After January 1, 1969, the existing provisions of Title 15 are repealed completely.

Section 144 of this act reads as follows: "This act shall be effective on December 31, 1968." Thus it can be seen that there is a conflict between the provisions of these two sections. In order to construe which of the two is controlling it must be remembered that the intent of the legislature must be followed.

The Supreme Court of Montana in the case of **State ex rel. Williams v. Kamp, et al.**, 106 Mont. 444, 78 P. 2d 585 held:

In construing a statute, **the intention of the legislature is the controlling consideration**, and, to ascertain the reason and meaning of particular provisions of doubtful meaning, courts may resort to the history of the times and the cause or necessity influencing the passage of the Act. (Emphasis supplied.)

See also, 93-401-16, R.C.M. 1947, **Board of Equalization v. Farmers Union**, 140 Mont. 523, 374 P. 2d 231; **Mont. Milk Con. Bd. v. Community Creamery**, 139 Mont. 523, 366 P. 2d 151.

In order to determine the intention of the legislature it is a well-recognized rule of construction that the legislative history of the particular act may be examined. In **Nichols v. School District No. 3, et al.**, 87 Mont. 181, 287 Pac. 624, the Court said:

In the interpretation and construction of statutes the purpose and intent of the legislature must be ascertained and given effect, if possible, and in ascertaining such purpose and intent it is proper to consider the history of the legislation on the subject (citing cases), and we may avail ourselves of the actual proceedings in the enactment of laws as disclosed by the legislative records. (citing authority)

House Bill No. 383 as originally introduced was entitled:

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS OF MONTANA, RELATING TO BUSINESS CORPORATIONS FOR PROFIT, AMENDING SECTIONS 25-102 AND 99-4401, R.C.M. 1947, AND REPEALING SECTIONS 15-101 . . . 15-1908 . . . 25-103 . . . 25-109, AND 93-4342, R.C.M. 1947."

The deleted matter includes all the sections between sections 15-101 and 15-1908 and 25-103 and 25-109, R.C.M. 1947. This bill was referred to the House Judiciary Committee and upon their recommendation it was amended in two respects. First by deleting the period and quotation mark after "1947" at the end of the title to the bill and adding the following words: "AND PROVIDING AN EFFECTIVE DATE." Secondly, by adding another section to the bill which stated: "Section 144. This act shall be effective on July 1, 1968."

The minutes of the House Judiciary Committee meeting on January 24, 1967, reveal this entry:

Representative Goan moved that House Bills No. 383, 384, and 386, The Montana Business Corporation Act, the Religious Corporation Sole Act, and the Non-profit Corporation Act, be amended to make the laws effective July 1, 1968. The Motion carried unanimously. Representative Goan moved that House Bills No. 383, 384 and 386 DO PASS AS AMENDED. The motion carried unanimously.

House Bill No. 383 as amended passed the House and was transmitted to the Senate where it was referred to the Senate Judiciary Committee. This committee amended it further by deleting the words "July 1, 1968," from Section 144 and substituting the words "December 31, 1968."

The minutes of the Senate Judiciary Committee meeting for February 21, 1967, state:

Amendments were proposed for House Bills 383, 384 and 386. It was agreed upon by the committee to change the effective date of these three bills from July 1, 1968 to December 31, 1968. After considering House Bill No. 383, Senator Turnage made a motion, seconded by Senator Haughey, that the amendments be adopted. The motion was carried. Senator Turnage moved, seconded by Senator Haughey, that House Bill No. 383, as amended, be concurred in. The motion carried.

The bill as amended passed the Senate and was returned to the House for concurrence in the Senate amendment. The House concurred in the amendment and the bill was transmitted to the Governor who signed it on March 2, 1967.

Another recognized rule of construction is that changes introduced into a statute by amendment are not assumed to be without design. **State v. Hays**, 86 Mont. 58, 282 Pac. 32. As is pointed out in **2 Sutherland Statutory Construction** §5015 at page 506:

Adoption of an amendment is evidence that the legislature intends to change the provisions of the original bill.

Since the original bill did not contain a specific effective date it would have become effective on July 1, 1967. Section 43-507, R.C.M. 1947. We must then assume that the legislature by amending the bill intended that it have a different effective date.

The title of an act is also indicative of the legislative intent in passing it. **State ex rel. Smith v. Duncan**, 55 Mont. 376, 177 Pac. 248; **Morrison v. Farmers' & Traders State Bank**. 70 Mont. 146, 225 Pac. 123. As previously pointed out, the title of this act contains the phrase: "AND PROVIDING AN EFFECTIVE DATE." This is further indicative of the legislature's intention that the act become effective December 31, 1968.

Finally, the Montana Supreme Court has stated that where two provisions of an act are conflicting, the last in order of arrangement controls. **State ex rel. Koefod v. Board of County Commissioners of Hill County**, 56 Mont. 355, 181 Pac. 147. In **State ex rel. Boone v. Tullock**, 72 Mont. 482, 234 Pac. 277, the Court stated the rule thusly:

It is the rule, of course, that where two provisions of an Act of the legislature are conflicting and cannot be harmonized, the last in order of arrangement controls.

Applying such a rule to the instant situation bolsters the conclusion that the legislature intended the effective date of this act to be December 31, 1968.

The purpose to be served in construing legislation is to ascertain what appears to be the intent of the legislature; not to insert what has been omitted or omit what has been inserted. The Supreme Court of Ohio, in a case involving the question of the effective date of a statute stated:

The presumption is that the legislature intended the act to take effect at the time it declared the act should be in effect, and the court may not by construction substitute a different time merely to correct defective legislation. The province of construction is to ascertain and give effects to the intention of the legislature, but this intent must be derived from the legislature and may not be invented by the court. To supply the intention and then give the statute effect according to such intention would not be construction but legislation. **State v. Roney**, 92 N.E. 486.

While it may be more convenient to construe the effective date of this act as July 1, 1967, insofar as the administration of it is con-

cerned, nevertheless it is my opinion that the legislature intended this act to become effective on December 31, 1968. This being so, the provisions of section 136 of the act are inoperative for any purpose until that date. **State v. Northern Pac. Ry. Co.**, 36 Mont. 582, 93 Pac. 945; **Peterson v. Livestock Commission**, 120 Mont. 140, 181 P. 2d 152.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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