No

February 21, 1951

To Honorable Harold I. Goss, Secretary of State
Re: Fees Payable to the State of Maine on increase of stock of the Bates Manufacturing Company

In answer to your inquiry of the 15th February, 1951, regarding the fees payable for the use of the State by the Bates Manufacturing Company on account of the increase in its authorized capitalization, as voted on January 30, 1951, at a special meeting of its stockholders, you are advised as follows:

Bates Manufacturing Company was organized under Chapter 360 of the Private and Special Laws of Maine, 1850.

Bates Company was organized under the general laws of Maine on October 26, 1945. By Chapter 165, Private and Special Laws of Maine, 1947, Bates Manufacturing Company was authorized

> ". . . to acquire by any appropriate means all the assets of whatever nature of Bates Company, and thereafter to have and exercise, in addition to the powers and purposes theretofore held and exercised by it, all the powers and purposes of Bates Company as set out in its certificate of organization."

Shortly after the effective date of the last named act (Chapter 165, Private and Special Laws of Maine, 1947), all the assets of Bates Company were legally transferred to Bates Manufacturing Company and are still owned and operated by Bates Manufacturing Company.

On January 30, 1951, Bates Manufacturing Company at a special meeting of its stockholders voted to increase its authorized capital stock by 2,608,500 shares of common stock, $10 par value, so that thereafter Bates Manufacturing Company would have an authorized capitalization of 45,000 shares of Preferred Stock, $100 par value, and 3,000,000 shares of Common Stock, $10 par value.

Section 4 of Chapter 49, R.S. 1944, provides that capital stock of a corporation organized under a special legislative act may be increased as provided in Section 71 thereof.

Section 71 (Chapter 49, R.S. 1944) specifies the machinery for the increase of the capital stock of any corporation. The fees therein provided for the increase of capital stock are

> "an amount . . . equal to the amount that a like corporation organized with such increased authorized capitalization would have to pay in excess of one organized with the old authorized capitalization."

Until the passage of Chapter 152, P.L. 1862, Maine, there was no method in Maine of organizing a corporation save by Special Act of the Legislature.

This Act of 1862 authorized the organization of corporations under the general law for the following purposes only, viz.: manufacturing, mechanical, mining, or quarrying.

In 1875 the State adopted the Constitutional Amendment now found in Article IV, Part Third, Section 14 of our Constitution (P. 28, R.S., 1944) which provided:

> "Corporations shall be formed under general laws, and shall not be created by special acts of the Legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the state."

Following the adoption of this Constitutional Amendment, the general corporation law was amended by Chapter 65, P.L. 1876, so that corporations carrying on any lawful business except banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive a profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar- and fire-proof vaults, and also telegraph companies, might be organized in the same manner as theretofore provided as to manufacturing, mining and quarrying companies.

The Constitution having prohibited organization of ordinary business corporations under Special Acts of the Legislature, it has not been legally possible since 1875 (Constitutional Amendment) for corporations such as Bates Manufacturing Company to be formed except under the general law.

From time to time, since 1875, special chapters have been added to the general statutes providing for the organization thereunder of one or more of the special kinds of corporations excepted from the scope of the 1876 statute.

Such chapters provided varying fees for the organization of the respective kinds of corporations covered thereby.

Prior to 1891 there was no organization fee, as such, for the organization of general business corporations, whether organized under the general law or special act; likewise, there was no fee for the increase of the stock of such general business corporations, no matter how organized. There were, however, filing fees payable to the Attorney General and the Secretary of State for their personal use.

In 1893, by Chapter 99 of the Public Laws, there was enacted for the first time a schedule of fees payable to the Attorney General, Secretary of State, and for the use of the State for the organization of corporations under the general law, and a schedule of fees payable for the use of the State upon the increase of the capital stock of general corporations organized under the general law.

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56, R.S. 1930) laid down the same machinery and identical fees for the increase of the capital stock of "any corporation heretofore or hereafter created by special charter and not charged with the performance of any public duty, or organized under the general laws of the state."

Section 49 (Chapter 56, R.S. 1930) laid down the same machinery and identical fees for the increase of the capital stock of "any corporation created by special act of the legislature or organized under the general laws of the state and charged with the performance of any public duties or organized for (quasi-public) purposes."

From 1913 up until 1931, there were no material changes with respect to fees charged corporations upon organization or upon the increase of the capital stock.

There were, however, many changes during this period with respect to other matters affecting capital stock of corporations, none of which is material to the present controversy.

It would seem that, up through 1930, the policy of the legislature, since fees were first charged 37 years before, was to charge exactly the same fees for the increase in the capital stock of all business corporations, whether created by special act or organized under the general laws.

It was also the policy of the legislature, since fees for quasi-public corporations were first charged in 1913, to charge exactly the same fees for the increase in the capital stock of all quasi-public corporations, whether created under a special act or organized under the general laws.

It also appears that fees for the increase of capital stock of quasi-public corporations have never been the same as fees for the increase of the capital stock of business corporations.

During the 50 or 60 years immediately preceding 1930 there had been a great increase in the number and importance of corporations. As corporations became more and more the standard modus operandi for the conduct of business, corporate forms existing in 1850 were changed to conform with the requirements of a modern business world; and as the business world required it, the Legislature of Maine passed laws more fitted to the business convenience; thus by 1930 there were ten sections in the Revised Statutes pertaining to capital stock, but in 1931, by Chapters 182 and 183 of the Public Laws of that year, the Legislature substituted for these ten sections in R.S. 1930, two (2) sections.

To be specific, Chapter 182, P.L. 1931, repealed Section 47, dealing with the method of changing the par value of shares; Section 49 dealing with quasi-public corporations increasing capital, changing of purposes or number of directors, and fees payable; Section 50 dealing with increase and decrease of non-par shares; Section 56, dealing

with change of par value shares to non-par shares and fees payable, and amended Section 48 so that it constituted a codification of old Section 48 plus the subject matter of Sections 47, 49, 50 and 56 of R. S. 1930.

Chapter 183 of P.L. 1931 did the same thing to Sections 51 through 55 and consolidated the substance of those sections in a new section to be numbered 51.

Section 48, Chapter 56, R.S. 1930, as amended in 1931, is the direct predecessor of Section 71, Chapter 49, R.S. 1944; and it is in this section that first occurred the language requiring that fees payable upon an increase in capital stock shall be an amount which a "like corporation" organized with such authorized capitalization would have to pay in excess of one organized under the old authorized capitalization.

In 1931 besides the codification referred to above, there was enacted by Chapter 240 a new fee schedule for the organization of business corporations.

Issue

Whether the word "LIKE" in the preceding sentence of Section 71 (R.S. 1944) is intended to distinguish between special act corporations on the one hand and general law corporations on the other, whatever their respective duties and purposes may be, or whether it is intended to distinguish between private business corporations on one hand and quasi-public corporations on the other, however such respective corporations may have been organized.

In other words, does "like corporations" as used in Section 71 mean corporations that are alike in their purposes and duties or alike in their manner of creation?

Bates Manufacturing Company was organized in 1850 under a special act (Chapter 360, P&SL 1850).

It could not have been organized under the general law, because no general law for the organization of corporations existed until 1862.

If the Bates Manufacturing Company had been organized in 1876 or at any time subsequent thereto, it would have had to be organized under the general laws because at that time and until the present time a Constitutional Amendment prevented and prevents the organization of a manufacturing company under a special act.

A revision or codification of statutes is not an inference to be interpreted as abolishing a long existing policy of the State.

By the codification of 1931, the Legislature contemplated a change of rates, but there is nothing in the amendment of 1931, to indicate that the Legislature intended to abandon its long-standing policy of grouping corporations, for purposes of fees, according to the business carried on rather than according to the manner of their creation.

It would take most compelling language to indicate that the Legislature intended to abolish the distincrion which it had always

recognized ever since fees for the increase of capital stock were first charged and to adopt a new basis of distinction which had never before been recognized or even suggested.

In Landers v. Smith, 78 Maine 212 (1886), the Court said:

> "Courts will always endeavor to ascertain the real meaning and purpose of the Legislature in enacting a new statute. In such endeavor they are not confined to the words of the particular statute in question. The general policy of previous legislation and the general principles of law and equity are to be considered, for there is a presumption (controllable of course by sufficient words) that the Legislature did not intend any marked departure from such policy and principles."

Ever since non-par corporations were first authorized, they of necessity were distinguished as to fees payable both on organization and increase of capital stock from corporations with stock having a par value, because the fees of par corporations were computed on a par value basis, while fees of non-par corporations must be on the number of shares, there being no other applicable standard.

Here again it is significant to note that the Legislature adopted from the time when non-par corporations were first organized, a fee schedule based upon the size of the corporation and in no way relating to whether it was organized under a special act or under general law.

If the Bates Manufacturing Company were compelled to pay a fee based upon what it would have to pay for organizing under a special act, with a capitalization of 3,000,000 shares of Common and 45,000 shares of Preferred, how kmuch greater an amount that would be than if it were organized with its old capital under a special act!

Such an application would indeed be incongruous, as in 1951 neither the Bates Manufacturing Company nor any other private business corporation could constitutionally be organized under a special act.

Whether or not the State could constitutionally prescribe one scale of fees applicable to corporations organized under special act and another scale applicable to corporations organized under the general law, although both corporations have identically the same powers, purposes and types of stock, we do not here answer. Suffice it to point out, no such statute has yet been adopted or considered.

It certainly would be most unusual that a Legislature would choose to make a substantial distinction between corporations organized prior to 1875 and corporations organized since 1875, resting merely on the date of their organization.

In the entire history of the State of Maine no manufacturing company has ever paid special act rates for organization, the reason being that when such companies could be organized under such an act, there were no fees, and by the time fees were adopted in 1893, manufacturing companies had to be organized under the general law, and the fees therefor, by the constitutional provision, applied only to corporations organized "for municipal purposes, and in cases when the objects of the corporation cannot otherwise be attained."

There is no reason or logic why the amount of fee to be paid by Bates Manufacturing Company for the privilege of increasing its capital stock should depend upon whether it was organized in 1850 or 1876.

For the State to hold otherwise would be to penalize this or similar corporations so greatly for no other reason than that it and similar corporations had been in business for a long time.

Unless the language of the Legislature admits of no other interpretation, such a harsh and unjust construction should be avoided. (Landers v. Smith, supra.)

All corporations in this State are given the benefit of certain privileges.

The amount of money a corporation should pay for these privileges depends upon two things:

(a) What the corporation does;
(b) How much of it it does.

In other words, two cotton textile companies of the same size should pay the same amount; two hardware stores of the same size should pay the same amount; two street railway companies of the same size should pay the same amount.

It is not sound policy that a textile company should pay the same amount as a public utility, and quasi-public corporations have always paid higher rates. This is so because there are expensive governmental bodies established for the benefit of such corporations, and such companies generally are subject to more expensive regulations.

For the reasons hereinbefore, it is the opinion of this office that the fees payable by the Bates Manufacturing Company, for the use of the State on the increase of its authorized capital stock by 2,608,500 shares of Common Stock, $10 par value, as voted by the Bates Manufacturing Company, at a special meeting of its stockholders on January 30, 1951, (so that thereafter Bates Manufacturing Company would have an authorized capitalization of 45,000 shares of Preferred Stock, $100 par value, and 3,000,000 shares of Common Stock, $10 par value), should be determined in accordance with the provisions of Section 10, Chapter 49, R.S. 1944, and such determination should result in a total amount of fees of $855 due and payable from the Bates Manufacturing Company, for the use of the State, and the State should require and receive, for the use of the State, said sum of $855.

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Attorney General