

# MAINE STATE LEGISLATURE

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August 15, 1969

Joseph T. Edgar, Secretary

Secretary of State

Robert G. Fuller, Jr., Assistant

Attorney General

Increase in capital stock - filing requirements

You have handed me a certificate of amendment of the certificate of organization of a domestic corporation, which recites that at a meeting of shareholders of the corporation held on June 5, 1969, it was voted to increase the amount of capital stock from 4 million shares (par value \$1.25) to 8 million shares (par value \$1.25). This certificate was not presented to the Secretary of State for filing within 20 days after the meeting at which such vote was had.

The attorney for the corporation argues that an increase in capital stock is not a "change" within the meaning of 13 M.R.S.A. § 201, which requires that "changes" shall be filed with the Secretary of State within 20 days of the meeting which voted such "changes". He advances several arguments in support of his proposition, which I will treat in the order in which they appear.

I.

It is argued at the outset that the first paragraph of section 201 contemplates two types of stockholder action: first, an "increase or decrease" in capital stock; second, a "change". The basis for this contention is the phrasing of the section, which permits the stockholders to do the following:

1. Increase or decrease its authorized capital stock;
2. Change the number or par value of the shares or their classification;
3. Change shares with par value into an equal or different number of shares without par value or shares without par value into an equal or different number either with or without par value;
4. Change the number of its directors;
5. Change its purposes . . . ;
6. Make any other change . . . in its certificate of organization . . . (which) . . . would be proper . . .

The statute then imposes the requirement on the corporation to file within 20 days (after the meeting) a certificate setting forth such changes with the Secretary of State . . .". (emphasis added)

The corporation's attorney interprets the section to mean that only certificates of "changes" are subject to the 20-day filing requirement, and since an increase in capital stock is not referred to in the statute as a "change", a certificate of such increase is exempt from the requirement.

This argument exalts form over substance. The failure to label an increase in capital stock as a "change" does not obscure the fact that such an increase requires a change in the certificate of organization. As I read section 201, all changes in the wording of the original certificate are subject to the 20-day filing requirement. Since an increase in the capital stock of necessity results in such a change, the requirement applies.

## II.

Tracing the legislative history of section 201 back to R.S.M. 1883, c. 47, § 20, the corporation's attorney next argues that this original statute likewise drew a distinction between an increase in capital and a "change", with only the latter action subject to a notice requirement. The 1883 statute reads:

"In case the stockholders of any such company already organized as aforesaid, or thereafter so organized, find that the amount of its capital stock is insufficient for the purposes for which said corporation is organized, or that the number of directors is inconvenient for the transaction of its business, the stockholders may, by a vote representing a majority of the stock issued, increase the amount of the capital stock of said corporation to any amount not exceeding two million dollars, and may change the number of their directors in like manner, and the corporation shall give notice of such change to the Secretary of State within ten days after said vote." (emphasis added)

As I read the statute, either action was subject to the notice requirement. Further, in the next codification of the corporation laws, we find support for the argument that the legislature considered increases in capital stock subject to the notice requirement. R.S.M. 1903, c. 47, § 39 reads in pertinent part:

"If the stockholders of any corporation created by special charter and not charged with the performance of any public duty, or organized under the general laws of the state, find that the amount of its capital is insufficient for the purposes for which said corporation is organized, or that the number of directors is inconvenient for the transaction of its business, the stockholders may

by a vote representing the majority of the stock issued, increase the amount of its capital stock to any amount, and may change the number of directors in like manner, and the corporation shall file a certificate thereof with the Secretary of State within ten days thereafter . . . ." (emphasis added)

Similarly, R.S.M. 1903, c. 47, § 40, dealing with decreases in capital stock, required the corporation to "give notice of such change to the secretary of state within ten days thereafter." (emphasis added)

### III.

The 1930 codification introduced a requirement that where the stockholders deemed the capital insufficient, the number of directors inconvenient, or the purposes inadequate, an amendment could be made at a meeting "the call for which shall give notice of the proposed change". R.S.M. 1930, c. 56, § 48. In the 1944 codification, the cited language reads "the call for which shall give notice of the proposed action." This latter language also appears in 13 M.R.S.A. § 201. The attorney for the corporation argues that the substitution of "action" for "change" must mean that only those "actions" called "changes" are subject to the 20-day filing requirement. In my opinion he is straining the plain meaning of the statute to reach his result. The substitution of "action" for "change" does not warrant the gloss sought to be placed upon it. These words are not words of art. In the words of Justice Frankfurter, they are not words whose "sense . . . cannot be got except by fashioning a mosaic of significance out of the innuendoes of disjointed bits of statute." Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 538.

### IV.

Finally, the attorney for the corporation argues that the increase in capital stock should not be subject to the 20-day filing requirement because "(A) mere increase in authorized capital has no effect on the rights of stockholders or creditors . . . until the actual issuance of the increased shares . . ." This argument completely misses the point of section 201, which, in my view, is to require that every change in the original certificate of corporate organization be filed with the Secretary within 20 days after the meeting at which it occurred, so that such change will be a matter of public record. It is immaterial when the public or stockholders and creditors will be affected; the point is that a change has been made. To point up the inconsistency in the argument, it is only necessary to inquire what effect on stockholders and creditors a "change" in the number of directors has. Clearly, none. Yet the attorney for the corporation concedes this "change" is subject to the 20-day filing requirement.

Joseph T. Edgar, Secretary

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Whether read in a historical context or with the intent to determine what was the regulatory scheme to be established, it seems to me that 13 M.R.S.A. § 201 does not exempt certificates of increase in capital stock from the 20-day filing requirement therein specified.

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Assistant Attorney General

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