



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Claude Isbell
Secretary of State
Capitol Station
Austin, Texas

Attention: Luther Estes

Dear Sir:

Opinion No. O-7382
Re: Whether Certificate of Reduction
of Capital by foreign corpora-
tion is an amendment or supple-
ment to original articles of
incorporation and subject to
minimum filing fee.

We have received your letter of August 26, 1946,
which is quoted as follows:

"A question has come up in this office as
to the proper classification of a certificate
of reduction of capital filed in connection with
a foreign corporation's permit for filing fee
purposes.

"The Anderson-Prichard Oil Corporation, a
Delaware corporation, on or about July 17, 1946,
filed a certified copy of a certificate of re-
duction of capital and this office classified
it as an amendment or supplement to its original
articles of incorporation and demanded payment
of the minimum filing fee of \$50.00 as provided
for in Article 3914 R.C.S. of Texas as amended.

"Article 1537 R.C.S. of Texas provides
that, "Each foreign corporation, after a per-
mit has been granted it to do business in this

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State, shall immediately file with the Secretary of State a certified copy of any amendment or supplement to its original articles of incorporation when any such amendment or supplement to its original articles of incorporation is filed in the state territory or foreign country under whose laws such corporation is incorporated.'

"Article 3914 provides that, and we quote in part, 'Upon obtaining a permit under Article 1529 and upon filing a certified copy of any amendment or supplement under Article 1537, each foreign corporation shall pay the following fees: - - - (Certain fees are here set out based upon issued capital stock which we deem unnecessary to outline) - - - ; provided that the minimum filing fee for any amendment or supplement shall be Fifty (\$50.00) Dollars.'

"Under our interpretation of the foregoing articles, we believe that the certificate of reduction of capital, above referred to, is properly classified as a supplement to the original articles of incorporation and, therefore, subject to the minimum filing fee of \$50.00. The corporation, however, has contended that the certificate is not an amendment to the charter or articles of incorporation and that the fee has erroneously been assessed. In further support of their contention they claim that the capital was reduced without affecting the total number of shares authorized. It must be noted, however, that both Articles 1537 and 3914 refer to any amendment or supplement, and we are basing our assessment strictly upon the fact that the instrument is a supplement.

"In the light of the provisions of Articles 1537 and 3914 supra, we request your opinion on the following question:

"Does the filing of a certificate of reduction of capital by a foreign corporation constitute an amendment or supplement to the original articles of incorporation and, therefore, subject to the payment of the minimum filing fee of \$50.00?"

Article 1537, V.A.C.S., authorizes the filing of amendments or supplements to the original articles of incorporation of foreign corporations, as follows:

"Article 1537. Amendments to charter.

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"Each foreign corporation, after a permit has been granted it to do business in this State, shall immediately file with the Secretary of State a certified copy of any amendment or supplement to its original articles of incorporation when any such amendment or supplement to its original articles of incorporation is filed in the state territory or foreign country under whose laws such corporation is incorporated. Acts 1919, p. 81."

The provisions of Article 3914, V.A.C.S., among other things, enumerates the fees the Secretary of State is required to charge foreign corporations upon filing certified copies of amendments or supplements, the relevant parts of which we quote as follows:

"Article 3914. Secretary of State.

"The Secretary of State is authorized and required to charge for the use of the State the following other fees:

" . . .

"Upon obtaining a permit under Article 1529 and upon filing a certified copy of any amendment or supplement under Article 1537, each foreign corporation shall pay the following fees for the privilege of being admitted to do an intrastate business in this State: Fifty (\$50.00) Dollars for the first Ten Thousand (\$10,000.00) Dollars of its issued capital stock employed in Texas, as hereinafter determined, and Ten (\$10.00) Dollars for each additional Ten Thousand (\$10,000.00) Dollars or fractional part thereof. . . . provided that the minimum filing fee for any amendment or supplement shall be Fifty (\$50.00) Dollars." (Emphasis added)

The Certificate of Reduction of Capital of this foreign corporation which is doing business in Texas has been filed in the office of the Secretary of State for the State of Delaware. As such, if the instrument is an amendment to the original articles of incorporation on file in the State of Delaware, it clearly comes within the provisions of Article 1537, supra, which requires a certified copy thereof to be filed with the Secretary of State of Texas. It will then further incur the payment of the minimum filing fee required by the underlined portion of Article 3914, supra.

The statutes of both Texas and Delaware specifically prescribe the manner by which a corporation may re-

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duce its capital stock and each requires certificates to be filed in the respective offices of the Secretaries of State.

For a statute to constitute an amendment to a corporate charter, it is generally required that such statute correct, improve, reform or alter the original articles of incorporation. Where the Legislature has enacted a statute authorizing a corporation to mortgage its property or increase its capital stock or any other fundamental change in the charter or its basic features, it is an amendment to the charter, whether termed so or not. 18 C.J.S. Corporations § 82. It is our opinion that the reduction of capital of this corporation by the amount of one million seven hundred fifty thousand dollars (\$1,750,000.00) by the retiring of 175,000 shares of common stock of the par value of \$10.00 per share is a material alteration of the original articles of incorporation.

It is consequently our further opinion that the filing of the certified copy of the certificate of reduction of capital hereunder consideration may properly be classified as an amendment to the corporation's original articles of incorporation and as such is subject to the payment of the minimum filing fee of \$50.00 as prescribed by Article 3914, V.A.C.S.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

APPROVED OCT 3, 1946

Claude Isbell By
ATTORNEY GENERAL OF TEXAS

Jack K. Ayer
Jack K. Ayer
Assistant

JKA:mrj

