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Amending the Charters of Missouri Corporations

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AMENDING THE CHARTERS OF MISSOURI CORPORATIONS.

Our concern is with amendments to the corporate charters of private manufacturing and business companies organized under the laws of Missouri. How may the charters of such companies be amended? The answer to this question involves a survey of Missouri corporate history, which, though necessarily brief and superficial in character, is nevertheless not without interest.

Originally, in Missouri, as in the then other States of the Union, a corporation could be created only by special act of the Legislature, and the corporation necessarily possessed only those powers which were to be found in the act that gave it birth. Not until the adoption of the constitution of 1865 was the Legislature forbidden to create corporations by special act. (Constitution of 1865, Article 8, Section IV.)

In order to set forth specifically the powers which all corporations created by the State of Missouri should have and enjoy, whether specified in the acts creating them or not, the Act of March 19, 1845 (R. S. 1845, page 231) was passed. These were:

1. To have succession for twenty years.
2. To sue and be sued.
3. To have a seal.
4. To hold real estate and personal property required for its purposes.
5. To appoint subordinate officers and agents.
6. To make by-laws.

To make it perfectly clear that no corporation should have powers by implication, Section 3 of the Act referred to, specifically provided that no corporation should possess any powers save those enumerated and those expressly given in its charter, and such as should be necessary to the exercise of the

powers so enumerated and given. Furthermore, Section 7 of this Act made every charter "subject to alteration, suspension and repeal in the discretion of the Legislature."¹

Four years thereafter, to-wit: On March 12, 1849, there was enacted the first general corporation act for business companies. That is to say, the first act to make it possible for any kind of company to incorporate in Missouri without a special act of the Legislature. This act related to corporations desiring to transact a "manufacturing, mining, mechanical or chemical business," and, substantially as enacted, was carried into the revision of 1855 (see page 384).

Up to the passage of the Act of 1849, therefore, it is manifest that no corporation in Missouri had the power to amend its own charter otherwise than by securing a special act of the Legislature. This act (1849) conferred upon companies incorporating thereunder two powers of amendment which might be exercised without special act of the Legislature, namely: The power (a) to increase and diminish its capital stock; and (b) to extend its business (Act of March 12, 1849, Section 20, R. S. 1855, Section 18). These powers it might exercise by vote of two-thirds of its stock in favor thereof (Section 19, R. S. 1855).

Thus the law remained up to the adoption of the Constitution of 1865.

Therefore, the only amendments to its charter during that period of time which a "manufacturing, mining, mechanical or chemical corporation" could make without a special act of the Legislature, were (a) an increase or decrease of its capital stock and (b) an extension or change in its business. *Such* a corporation might have its charter so amended by a two-thirds

1. This reservation was carried into the Constitution of 1865, as Section 4, Article VIII, and was, therefore, dropped from the statutes in the revision of 1865. It was not retained in the Constitution of 1875; neither does it again appear in any revision of the statutes.

vote of its stock. But in no other respect might its charter be amended, *save by special act of the Legislature.*

The question arises whether, during that period, the Legislature might, by special act, change the corporate charter in the absence of the *unanimous* consent of the stockholders. The charter constitutes, of course, a contract between the State and the corporation, between the State and the stockholders, and between the corporation and the stockholders. Nevertheless, an amendment to a corporate charter, which was not a *fundamental* change from the original plan, but was an *auxiliary* and incidental change consistent with the carrying out of the original plan and purposes, could have been made and that too with the approval of a *majority* of the stockholders. In other words, when one became a stockholder of a corporation he impliedly assented that *such* amendments might be made by the majority of the stock.²

We think there can be no doubt that, down to the adoption of the Constitution of 1865 when special acts of incorporation were the order of the day, a corporate charter might be amended, by special act of the Legislature, with the assent of a majority of the stock, in particulars not such as substantially to change the character and object of the corporation. Whether the amendment was fundamental or was auxiliary was a question of law for the court. (Cook on Corporations, Section 499.)

Following the adoption of the Constitution of 1865 our General Assembly met in the fall and, by act approved March 16, 1866, enacted a comprehensive corporation code. This appears in the General Statutes of 1865, beginning on page 326. The above mentioned act of 1849, relating to manufacturing, mining, etc., corporations, appearing in R. S. 1855, page 384,

2. *Pacific R. R. Co. v. Hughes*, 22 Mo., l. c. 298; *Hope Mutual Fire Ins. Co. v. Beckman*, 47 Mo. 93; *In re Powell*, 5 Mo. App. 220; *Gregg v. Granby Mining & Smelting Co.*, 164 Mo. 616, l. c. 626; *Cook on Corporations* (6th ed.) Sections 492-500; 14 *Corpus Juris*, pp. 187-191; 7 *American and English Encyclopedia Law* (2d ed.), pp. 679-683.

was (substantially) re-enacted under the head "Of Manufacturing and Business Companies," and the objects extended from "mining, mechanical, chemical," etc., to practically the same objects and purposes that now appear in our Manufacturing and Business article in Section 10151. To the six powers specified by the Act of 1845, as being possessed by every corporation (see above), a seventh was added, to-wit:

"To increase or diminish (by vote of its stockholders, cast as its by-laws may direct) the number of its directors or trustees to not less than three, nor more than thirteen, and may in like manner change its corporate name without in anywise affecting its rights, privileges or liabilities; such change of name or number of directors or trustees shall take effect and be in force from the date at which the president or secretary of such corporation shall file with the Secretary of State an affidavit setting forth the name adopted, or the number of directors or trustees fixed, together with the date at which such change in name or number of directors or trustees was voted by the stockholders of such corporation."

Two years later, by act of 1868, the right to issue preferred stock was for the first time specifically given to manufacturing and business companies. (Laws of 1868, page 29.) This necessitated *unanimous* consent of the stockholders and the certificate of such proceedings which was required to be filed in the office of the Secretary of State was substantially the same as that presently referred to in cases of increase or decrease of capital stock. Parenthetically it is interesting to note that this specific right to issue preferred stock related to increases of capital stock, and not to original incorporations of companies, for, though, thus early (1868) upon increasing its capital stock an existing corporation might make all or a part thereof preferred, and though the Constitution of 1875 expressly recognized the right to issue preferred stock with the assent of all stockholders (Article XII, Section 10), yet it

was not until 1891 that we find in the law *express* provision made for the issuance of preferred stock upon the original incorporation of a manufacturing or business company. (Laws 1891, page 79.)

At this time (1868) the situation, therefore, was as follows, namely: A business corporation could not be created by a special act of the Legislature, and, of course, its charter could not be amended by special act of the Legislature. It had express statutory authority to amend its charter in the following particulars:

1. To increase or diminish the number of its directors. (R. S. 1865, p. 227, Section 1; Act of March 16, 1866.)
2. To change its corporate name. (R. S. 1865, page 227, Section 1; Act of March 16, 1866.)
3. To increase or diminish its capital stock. (R. S. 1865, page 369, Section 10; Act March 12, 1849.)
4. To extend or change its business to any other objects authorized. (R. S. 1865, page 369, Section 10; Act March 12, 1849.)
5. To issue preferred stock. (Laws 1868, page 29.)

The statute did not, nor does it now, specify the vote necessary to accomplish changes 1 and 2, but merely that it should be "by a vote of its stockholders cast as its by-laws direct" and that the president or secretary should file an affidavit with the Secretary of State setting forth the name adopted or the number of directors or trustees fixed, together with the date at which such change in name or number of directors was voted. To accomplish changes 3 and 4, the statute provided as necessary "a vote of at least two-thirds of all of the shares of stock" (General Statutes 1865, page 369, Section 11), and that "a certificate of the proceedings, etc., shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman and recorded as provided in the

Second Section of this Chapter, and when so recorded the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid." (G. S. 1865, page 369, Section 12.) To accomplish change 5, an unanimous vote was then as now required and a certificate of the proceedings the same as that last mentioned.

No other amendment to charters of manufacturing and business companies was authorized by the statutes and no other provision for amending charters existed until 1881, when what is now Section 9736 of the Revised Statutes of 1919 was enacted. (Laws of 1881, page 72.) That Section is as follows:

"All amendments to articles of association of corporations organized under the laws of this State, made and filed in the office of the Secretary of State, are and shall be and become part of the articles of association of the corporation adopting and filing same; and this Section shall not be so construed as to give any corporation, whose articles are amended as in this article contemplated, any greater rights than though the subject of the amendments had been incorporated into the original articles of association; and any corporation, company or association which may increase its capital stock under the provisions of this article shall pay the additional amount provided by law for such increase."

Thus was legislative sanction *expressly* given to the amendment by corporations of their charters. Indeed, this Section has been referred to by our Supreme Court as "The section authorizing amendments" to charters.³

Since the enactment in 1881 of this section which is hereinafter referred to as the "general amendment law," only one additional amendment, so far as we are aware, has been ex-

3. State ex rel. v. Roach, 269 Mo. 1. c. 440.

pressly provided for by legislative act.⁴ The one referred to is the power to increase or decrease the par value of the shares of stock conferred in 1893. (Laws of 1893, page 128.) This now appears as the last sentence of Section 9749. R. S. 1919, and is as follows:

“Any corporation may at a meeting duly called and held, notice of such meeting first having been given in the manner and form as is provided in Section 9740 and 9741, Revised Statutes 1919, for increase of capital, increase or decrease the par value of its shares of stock and, respectively, correspondingly, reduce or increase the number thereof, by a vote of a majority of the stock of the corporation.”

It may be inquired why if corporate charters might be amended under the above mentioned general amendment law of 1881, it was thought advisable by the act just quoted *specifically* to give corporations the right to change the par value of their shares. Without inquiring into the history of this Section (9749), a sufficient answer to the question is that the Section prescribes the *procedure* and the *vote* necessary to accomplish such amendment. Without it there would be no uniform procedure, but it would vary with the different corporations; and there would be uncertainty whether an unanimous or a mere majority stock vote would be sufficient. Therefore,

AS TO THE SITUATION PRIOR TO THE ADOPTION OF THE CONSTITUTION OF 1865:

First—With the exception of the right of manufacturing, etc., companies to (a) increase and diminish their capital

4. However, the so-called “Non-par Stock Act” of April 12, 1921 (Laws of 1921, page 661), may well be deemed to confer upon corporations the right to amend their charters upon “reorganization,” “merger” or “consolidation” so as to provide for the issuance of shares without nominal or par value. But it is not our purpose to deal specifically with that Act and this article should be considered as written without reference to its provisions.

stock; and (b) extend their business (which might be done by a two-thirds stock vote), the corporate charter of a Missouri corporation could be amended only by special act of the Legislature.

Second—Any amendment which would not work a fundamental change from the original plan, but which was an auxiliary and incidental change, consistent with the original plan and purposes of the corporation, could thus be secured with the assent of a *majority* of the stockholders.

Third—Whether the amendment was fundamental or auxiliary, was a question of law determinable finally by the court.

AS TO THE SITUATION SINCE THE ADOPTION OF THE CONSTITUTION
OF 1865:

First—Amendments to corporate charters, by special acts of the Legislature, are forbidden.

Second—It is expressly provided by statute that certain specific amendments may be made, the vote required in each instance (save two) being specifically stated, and the character of the certification to the Secretary of State in each instance (save one) being specifically described. These are as follows:

(a) To increase or diminish the number of its directors. (R. S. 1919, Section 9749, Act of March 16, 1866.)

Vote required: Not specified.

Certification required: Affidavit of president or secretary.

(b) To change its corporate name. (R. S. 1919, Section 9749; Act of March 16, 1866.)

Vote required: Not stated.

Certification required: Affidavit of president or secretary.

(c) To increase or decrease its capital stock. (Const. Sec-

tion 8, Article 12; R. S. 1919, Sections 9740-1-2, 10159-60-61. Act of March 12, 1849.)

Vote required: An affirmative vote of the persons holding the larger amount in value of all of the shares.

Certification required: A certification "by the proper corporate officers of such corporation." (Section 9742.) "A statement of the proceedings * * * signed and verified by the affidavit of the chairman and countersigned by the secretary; and such statement shall be acknowledged by the chairman and recorded, as provided in Section 10145, and a certified copy of such recorded instrument shall be filed in the office of the Secretary of State," etc. (Section 10161.)

(d) To extend or change its business to any other purposes authorized. (R. S. 1919, Section 10159; Act March 12, 1849).

Vote required: Same as shown under last *supra*.

Certification required: The same as under last *supra*.

(e) To issue preferred stock upon increase of capital stock. (R. S. 1919, Section 10163; Laws 1868, page 29.)

Vote required: "All the stock of said company."

Certification required: Same as last *supra*, except that same shall also set forth the preferences, priorities, classification, character and rate of dividend. (Section 10164, R. S. 1919.)

(f) To increase or decrease the par value of its shares of stock. (R. S. 1919, Section 9749; Laws of 1893, page 128.)

Vote required: "A majority of the stock of the corporation."

Certification required: Not specified.

Though the statute does not prescribe the *vote* required to accomplish amendments (a) and (b) above, that is, to change the number of directors and change the corporate name, it is submitted that a majority of the stock is sufficient. If prior to the Constitution of 1865, an auxiliary and incidental, as distinguished from an amendment working a funda-

mental, change might be secured by special act of the Legislature with the assent of a *majority* of the stockholders, likewise, since we do not regard a change in the number of directors or a change in the corporate name as fundamental, a majority of the stock should be able to accomplish such amendments. Likewise, if there be other corporate charter amendments desired, which do not reasonably fall within any of the aforesaid classes of amendments, provision for which is expressly made by the statutes, then, under the above noted "general amendment law" (R. S. 1919, Section 9736), it would seem that the same rule should govern, that is to say, an unanimous vote should be required to carry a fundamental amendment, whereas a majority of the stock should be sufficient to accomplish charter changes that are merely auxiliary or incidental to and consistent with the prosecution of the original plan and purposes of the company.

So much for the amendments themselves and the votes necessary to adopt them.

Now it remains to be considered whether Section 10145 (R. S. 1919) makes it necessary that the certification required be signed, acknowledged and sworn to by *all* the stockholders, for unless there be such requirement in that section, then none can be found elsewhere. That Section is as follows:

"The articles of agreement shall be signed and acknowledged and sworn to by all the parties thereto, including the parties selected as directors or managers for the first year, before some officer in the State of Missouri having a seal, and recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located, and a certified copy of such recorded instrument shall be filed in the office of the Secretary of State: *Provided*, that no subsequent amendment of the articles of agreement, which is expressly authorized by law, shall take effect until same, in due form, has been so recorded and certified, and sworn to as hereinbefore provided; and *provided* further, that in the increase of the cap-

ital stock of any corporation the same proceedings shall be had, so far as practicable, as in the original proceedings for incorporation.”

This section down to the first proviso, is in *substance* the same as Section 1 of the Act of March 12, 1849, above referred to, relating to business corporations, except that the act of 1849 required the articles to be filed with the Circuit Clerk. It was revised somewhat in 1864 (Laws of 1864-5, page 64), and again in 1866 and appears in the General Statutes of 1865, page 367, Section 2.

Since the revision of 1879 said portion of this Section (that is, down to the first proviso) has remained practically word for word the same (R. S. 1879, Section 927). In 1903 the Legislature added the first proviso, namely:

“*Provided*, that no subsequent amendment of the articles of agreement, which is *expressly* authorized by law, shall take effect until same, in due form, has been so recorded and certified, and sworn to *as hereinbefore provided.*” (Italics ours.) (Laws of 1903, page 123.)

Thus, until the amendment of 1903, this Section related only to the articles of agreement.

In 1911 the Legislature amended the first section of the article relating to manufacturing and business companies (now Section 10144) by requiring, in substance, that if any part of the capital stock was paid in property the articles of agreement must itemize and describe and value the property as therein set forth. At the same session the second proviso to Section 10145 was added, namely:

“*And provided further*, that in the increase of the capital stock of any corporation the same proceedings shall be had, so far as practicable, as in the original proceedings for incorporation.”

Now does this section, as thus amended, require that

amendments to the articles of agreement be signed, acknowledged and sworn to by *all* of the stockholders and recorded, and a certified copy be filed with the Secretary of State?

We contend that it does not and that as to no amendment, whether it be expressly authorized by law or not, is it essential that any certificate be signed, acknowledged, sworn to and recorded by any of the stockholders, save the president and secretary, or, in cases of increase or decrease of capital stock (and perhaps also in cases of the increase or decrease in the par value of the shares), by the chairman of the meeting.

It should be noted that the first proviso of Section 10145 relates only to amendments "*expressly* authorized by law," and that the second proviso relates only to an amendment increasing the capital stock. Neither proviso, therefore, relates to any desired amendment (if there be one), which is not *expressly* authorized by the statutes.

It is manifest that where it is desired to amend the charter so as to increase or diminish the number of directors, or to change its corporate name, it is only necessary that an affidavit of the *president* or *secretary*, setting forth what the statute requires, be recorded and filed with the Secretary of State, for the law so expressly and specifically provides. (R. S. 1919, Sections 9749, and 10145.)

What were the purposes of these provisos? Manifestly the purpose of the proviso of 1903 (the first proviso) was to make it clear that amendments should not take effect until they had been "recorded, certified and sworn to," just as is required to be done with articles of agreement. Up to that time the only statute having to do *expressly* with amendments as such was the above mentioned "general amendment law" of 1881 (page 72), now R. S. 1919, Section 9736, which, as we have noticed, provided:

"All amendments to articles of association of corporations organized under the laws of this State *made and filed in the*

office of the Secretary of State, are and shall be and become a part of the articles of association of the corporations, etc.”

It is apparent, therefore, that the first proviso enacted in 1903 was intended to require that the amendments, like the articles of agreement, be recorded before being filed with the Secretary of State. We feel quite convinced that it was not intended by this proviso to require that the amendment be signed by *all of the stockholders* of the corporation, but to make it clear that the amendment should appear of record in the Recorder of Deeds' office. If its intent had been to require the *stockholders* to sign, acknowledge and swear, the proviso would have been so clearly and fully phrased as to leave no doubt upon this subject, the practice having been to the contrary.

Furthermore, only by implication can this proviso be held to require amendments to be signed, acknowledged and sworn to by all the stockholders. It is possible to give it that construction only by holding, first, that the *articles of agreement* must be signed, acknowledged and sworn to by *all of the incorporators* of the corporation, and, next, that since this proviso says that the amendments shall be “sworn to *as hereinbefore provided,*” therefore they too must be signed, etc., by *all the stockholders* of the corporation. Now, if the articles of agreement need *not* be signed by *all* the incorporators—all those who are to “be a body corporate,”—then there is no foundation whatever for the contention that all stockholders must sign the desired amendment. It will be noted that it is not provided that the articles of agreement shall be signed by all those who are to constitute the body corporate, but only by “all the parties *thereto,*” including the parties selected as directors or managers for the first year. Section 10146 provides:

“The persons so acknowledging such articles of association *and their associates* and successors, shall, for the period not to exceed fifty years next succeeding the issuance of such certificate by the Secretary of State, be a body corporate, and

by such name *they*, and their successors, shall be entitled to have, possess, and enjoy all the rights and privileges conferred by laws upon corporations subject to the provisions of this article.”

It has been expressly held by our St. Louis Court of Appeals that these statutes contemplate that not only those who subscribe and acknowledge the articles, but others—that is “*their associates*”—may affiliate as incorporators, and that “it was not essential to create the relation of shareholder and corporation here in judgment that defendant should actually subscribe and acknowledge the articles of agreement, or that he should be mentioned therein as one of the incorporators, provided someone authorized to do so represented him in forming the corporation *Associates* may become incorporators, though they have not subscribed or acknowledged the articles of agreement. *The employment of the word ‘associates’ in the statute seems to exclude the idea that it is essential that all of the share takers are required to subscribe the articles in business corporations.*”⁵ (Italics ours.)

It being established, therefore, that even upon the original incorporation of a company it is not essential that *all* of the shareholders sign the articles of agreement if those who do sign are authorized to represent the others who do not, it follows as a matter of course that there cannot be a satisfactory foundation for the conclusion that upon the amendment of the articles of agreement all of the shareholders must sign the amendment. It is only essential that those who do sign the amendment be authorized to do so by and for the shareholders. This authority they, of course, and of necessity, always have when a proposed amendment has been carried by the requisite majority.

The statutes not only do not lay down any other rule, but

5. DeGiverville Land Co. v. Thompson, 190 Mo. App. 683, 1. c. 694.

any other rule very often would not be practicable, and indeed in many instances might operate to deny utterly the express right to amend which the statutes have conferred. Take, for example, a corporation with a great number of shareholders. If its stockholders should vote to increase its common capital stock, or to work some other change in its charter, requiring the assent of a mere majority of its capital stock, it would be very burdensome, if not indeed impossible, to secure the signatures and oaths merely of the assenting majority, to say nothing of the dissenting minority.

Neither does the last proviso of Section 10145 lead to a different conclusion. Upon the contrary, it confirms rather the conclusion we have reached. It says:

“That in the increase of the capital stock of any corporation the same proceeding shall be had, so far as practicable, as in the original proceedings for incorporation.’ ’

We have already noticed that this proviso adopted in 1911 was enacted at the same time the first section of the manufacturing and business article (namely: 10144) was amended so as to require a listing, location and valuation of property taken in payment of capital stock. The manifest purpose of the proviso was to prevent, by increases of capital stock, the circumvention of the said amendment to Section 10144. That is to say, it requires corporations, when they increase their capital stock, and such increase is paid up in property other than cash, to list, locate and value such property, just as is required upon original incorporation. Without that proviso the purpose of the amendment to Section 10144, which was to disclose just how the stock was being paid for, could be rendered nugatory by incorporating primarily for a small sum of money, say \$2,000.00, and actually paying up the capital stock in full in cash, and then immediately increasing the capital stock, to say \$100,000.00, certifying merely that the increase was paid in property (the character and location of which was

undisclosed) of the reasonable cash value of \$98,000.00, when in truth and in fact the increase is fictitious,—paid for perhaps with a mere application for a patent valued at \$98,000.00, and not worth ninety-eight cents.

There is no provision in the law as to the character of the statement that shall be recorded and filed with the Secretary of State when the par value of shares is changed (Section 9749, last sentence), other than is contained in Section 10145; yet the practice of the Secretary of State has been to accept the affidavit of the president and secretary, although the law expressly provides that the proposition must be submitted and acted upon at a meeting of the stockholders called and held as in the cases of meetings for the increase of capital stock, and that a majority vote of the stock is required. (Section 9749.) We find no fault with this practice, since in making the affidavit required by law (essential to accomplish the amendment desired) the officers making and filing the affidavit necessarily represent the stockholders. However, it can with reason be urged that since in calling and holding the meeting to vote upon such proposition the same procedure is required as in cases of increase of capital stock, the statement necessary to be recorded and filed with the Secretary of State should likewise be of the character required in cases of increase or decrease of stock.

Again, the statutes do not expressly authorize at all a business corporation to amend its charter by changing the location of its principal office. Yet the practice of the Secretary of State has been to issue his certificate of such amendment upon receipt by him of a certified copy of the recorded affidavit of both the president and secretary reciting that such an amendment had been adopted by unanimous vote. Since we believe such an amendment is authorized by the "general amendment law" already referred to (Section 9736), and since these officers, in making and filing the affidavit, necessarily represent the stockholders of their company, we approve the

custom, though we doubt that the amendment is so fundamental in character as to require unanimous consent.

Again, although the decrease of the capital stock and the extension or change of its business by a corporation are, in the language of Section 10145, "amendments of the articles of agreement expressly authorized by law," and although they are authorized by the very statute that authorizes the increase of capital stock and the statement of the proceedings required is precisely the same, yet it has not been supposed that any save the chairman and secretary of the meeting need sign the statement.

Furthermore, no good purpose is served by construing the law to require amendments to be signed by all the stockholders. If a proposed amendment is carried by the requisite vote, then of necessity the officers of the company, or of the meeting, who take the further steps necessary to make effective the amendment declared for, of necessity represent and act for the corporation and particularly for the stockholders thereof, who have voted that such amendment should be made effective. And, since the statement must set forth the amendment and that the same had been carried by the requisite vote, and, if the stock is being increased or decreased, the assets, liabilities, the amount of increase or decrease, how and the property with which (if an increase) the new stock is paid up, the purposes of the State are thereby fully satisfied.

We urge, therefore, that it is not practical, and the law has never intended that amendments to articles of agreement, or that the statements of the proceedings of the stockholders' meetings adopting such amendments, should be signed, acknowledged and sworn to by *all* of the stockholders of the corporation; and indeed, that even upon the original incorporation of a company, all of the incorporators need not sign the articles of agreement, provided those who do sign, etc., are authorized to represent the remaining incorporators who do not.

We conclude by here setting down for convenient reference what the law of Missouri provides shall constitute the charter of a manufacturing and business company, and the particulars in which and how it may be amended.

The articles of agreement shall set out: (R. S. 1919, Section 10144):

First:—The Corporate Name:

The name may be changed at any time by vote of the stockholders. Further than prescribing that the directors may make by-laws "to direct the *manner* of taking the vote" (Section 9749) the statutes do not provide whether unanimous or a mere majority stock vote is necessary. Neither does the Secretary of State require the certification to recite the vote by which the proposed change was carried. So far as we are aware, the prevailing opinion of the legal profession is to consider a *majority* stock vote as sufficient. The president or secretary must file with the Recorder of Deeds and also with the Secretary of State, an affidavit setting forth "the date at which such change in name was voted by the stockholders of such corporation." (R. S. 1919, Section 9749; Act of March 16, 1866.)

Second—The Name of the City or Town and County in Which The Corporation Is to Be Located:

No specific provision made for change.

Rule of the Secretary of State's office is to certify the change upon receipt of affidavit of president and secretary that proposition to change has received *unanimous* vote.

*Third—The Amount of the Capital Stock of the Corporation, the Number of Shares Into Which it Is Divided, and the Par Value: That Fifty Per Cent, etc.:*⁶

Also, if it is desired that any portion of the stock shall be preferred, then there shall be set out the amount, number of shares, names of subscribers and the amount subscribed by each, and the preferences, priorities, classification and character.

The *par value* of the shares may be changed at a meeting called in the manner provided for increase of capital stock by a vote of a *majority* of the stock. The certification of the proceedings of such meetings is not expressly provided for. The rule of the Secretary of State is to receive a certified copy of the recorded affidavit of the president and secretary. (R. S. 1919, Section 9749; Laws 1893, page 128.)

The statutes make no express provision for the change in the *character* or in the *class* of the stock. That is to say, no power is expressly given by statute to change common stock into preferred, or preferred stock into common, or to change the preferences or priorities of preferred stock. No reason is apparent, however, why these amendments might not be made under the aforesaid "general amendment law," Section 9736.⁷ Whether to effectuate any of these changes would

6. Under the "Non-par Stock Act" of April 12, 1921, the articles, in lieu of stating the capital stock and the number and par value of shares, shall state (a) the number of shares with nominal or par value and the number of shares without nominal or par value that may be issued, and the classes into which such shares are divided, and (b) the nominal or par value of shares other than shares which are to have no nominal or par value, and (c) the amount of capital with which the corporation will begin business. (Laws of 1921, page 661, Section 1.)

7. Power to issue shares, preferred and common, of any class, without nominal or par value, either upon original incorporations or upon reorganization, merger or consolidation of Missouri corporations, is now given by the Non-par Stock Act of April 21, 1921 (Laws of 1921, page 661). It seems evident, therefore, that by virtue of this Act and the "general

require unanimous assent of the stockholders is a matter of doubt. It should certainly, it seems to us, require the consent of all of the stockholders whose stock is to be affected by the change. That is to say, all of the stockholders whose stock is to be changed into stock of a different character or class, or into stock with different preferences and priorities. Only a clarifying act of the Legislature, or an authoritative adjudication can provide the certain answer to this question.

The stock may be *increased* or *decreased* by meeting called as provided in Section 10161, and by majority stock vote, if the increase is common stock, and a statement of the proceedings called for by Section 10161 must be signed and verified by the affidavit of the chairman and be countersigned by the secretary, and acknowledged by the chairman and recorded, and a certified copy filed in the office of the Secretary of State.⁸

If any part of the increase is preferred stock, then the same proceedings must be had, except that the vote required is "all of the stock of said company" and the statement must in addition set forth the amount and number of shares, the price per share, and the preferences, priorities, classification and character of the preferred stock, and the rate of dividend to be paid thereon. (Const. Article 12, Section 8, R. S. 1919, Sections 9740-1-2, 10159-60-61; Acts of March 12, 1849; Const. Article 12, Section 10; R. S. 1919, Section 10165; Laws of 1868, page 29.)

amendment law" (R. S. 1919, Section 9736), either preferred or common shares with par value may be changed into shares without nominal or par value, and shares without nominal or par value may be changed into preferred or common shares with par value.

8. In the same manner a Missouri corporation with shares without nominal or par value "may increase or reduce the number of shares which it may issue." (Laws 1921, page 661, Section 10.)

Fourth—The Names and Places of Residence of the Several Shareholders and the Number of Shares Subscribed by Each:

There can, of course, be no occasion for amending this provision of the charter.

Fifth—The Number of the Board of Directors or Managers, and the Names of Those Agreed Upon for the First Year:

This number may be increased or diminished at any time by vote of the stockholders. Further than prescribing that the directors may make by-laws "to direct the *manner* of taking the vote" (Section 9749), the statutes do not provide whether unanimous or a mere majority stock vote is necessary. Neither does the Secretary of State require the certification to recite the vote by which the proposed change was carried. So far as we are aware, the prevailing opinion of the legal profession is to consider a majority stock vote as being sufficient. The president or secretary must file with the Secretary of State, and also with the Recorder of Deeds, an affidavit setting forth "the number of directors or trustees fixed, together with the date at which such number of directors or trustees was voted by the stockholders of such corporation." (R. S. 1919, Section 9749, Act of March 16, 1866.)

Sixth—The Number of Years the Corporation Is to Continue, Which in No Case Shall Exceed Fifty Years:

To what extent this part of a corporate charter may be amended is a matter of some doubt. It is submitted that there is no consideration of public policy that forbids a corporation under the general amendment section (9736) to shorten its life, though with much force it can be argued that there is a public policy which should refuse to permit the corporate life of the same corporation to be extended by charter amendment beyond a period of *fifty years* from its incorpora-

tion. That is to say, it is the policy of our State, expressed by statute, with respect to manufacturing and business companies, to make fifty years the extreme length of corporate life. If such a corporation, by repeated amendments to its charter, may extend the period of its existence, then it can prolong its life indefinitely. However, the power of an *expiring* corporation to prolong its life has been generally exercised and has been treated as existent by our Supreme Court.⁹ under Sections 9736 and 9750. (Enacted Laws 1885, page 80.)

We should say that the shortening of corporate life is a change so fundamental as to require unanimous consent.

To extend the life of an expiring corporation requires the authorization of the Board approved by three-fourths of the stockholders at a meeting called as provided in cases of increase of capital stock, and a certification of such facts by the president and secretary recorded in the office of the Recorder of Deeds and filed in the office of the Secretary of State with the payment of a tax of fifty dollars for the first \$50,000.00, or less of its capital stock, and \$5.00 additional for every additional \$10,000.00 of its capital stock. (R. S. 1919, Sections 9736, 9750.)

Seventh—The Purposes for Which the Corporation or Company Is Formed:

These may be extended or changed to any other purposes authorized. The procedure is identically the same as that for the increase of capital stock and a majority stock vote is sufficient. (R. S. 1919, Sections 10159-60-61.)

Finally, we reiterate the opinion that, when a proposed amendment to the charter of a private business corporation has been authorized and carried by the requisite vote of the stockholders at a meeting properly called, it is never neces-

9. State ex rel. v. Roach, 269 Mo. 437.

sary in order to carry said proposed amendment into effect that it, or the statement of the proceedings of the stockholders' meeting authorizing and adopting it, be signed by any of the stockholders, save the chairman and secretary of the meeting, or the officers of the company, as the statute in such case shall authorize or provide. In such case the chairman and secretary, or the proper officers of the company, as the case may be, necessarily represent the corporation and its stock-

GUY A. THOMPSON.

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