

OPINION
50-27

March 3, 1950 (OPINION)

CORPORATIONS

RE: Increase of Capitol Stock

Re: Section 10-0330 N.D.R.C. 1943

Your letter to the attorney general of date March 3rd, 1950, concerning the interpretation of the above section has been received and referred to my desk for attention.

You state that you have recently received papers from several domestic corporations purporting to increase their capital stock, all failing to show compliance with section 138 of the North Dakota Constitution and section 10-0330 N.D.R.C. 1943 in the matter of notice of the proposal to increase the capital stock of these corporations as required by the above sections of the Constitution and statutes.

Section 10-0330 N.D.R.C. 1943 provides explicitly for notice to each stockholder of the time and place of a meeting to be held to consider the proposal to increase stock, and provides specifically for the manner of service of this notice.

It is our opinion that an attempt to increase the stock of a domestic corporation without strict compliance with this notice would be a nullity. This provision governs all domestic corporations excepting only those having a specific statute governing them. See sections 6-0323 and 26-0816 for specific exceptions.

The provision in section 10-0330 N.D.R.C. 1943 for the sixty-day notice was enacted to comply with the provisions of section 138 of the North Dakota Constitution. There is no authority whatever for an omission or waiver of this notice, not even in the case of a small corporation when all stockholders are present and consent to a waiver or omission. There may be instances where a statutory provision for the benefit or protection of certain persons may be waived, but we do not believe that a constitutional provision may be so waived.

Therefore, it is our opinion that, before an increase or diminution of the capital stock of a corporation - that is, a domestic corporation - with exceptions noted above, can be effected, there must be filed in your office the certificate provided for by section 10- 0330 N.D.R.C. 1943, and that such certificate must show due notice as above noted. It is also our opinion that you should refuse to file any certificate which does not comply with said section. We would suggest that non-acceptable certificates be returned to the senders with statement why the same may not be filed.

WALLACE E. WARNER

Attorney General