

Opinion No. 22-3615

October 21, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Howard L. Bickley, Attorney at Law, Raton, New Mexico.

Amendment of Articles of Incorporation so as to Include Certificate of Non-Liability of Stockholders.

OPINION

{*187} I have been giving considerable thought and study to the question submitted in your letter of the 13th instant, as to the right of a corporation to file amended articles of incorporation so as to include therein a certificate of non-liability of stockholders under the provisions of Section 907, Code 1915, as amended by Section 4, Chapter 112, Laws 1917.

As suggested in your letter, the General Incorporation Act of {*188} this state was taken from the New Jersey Act, but Section 907 does not come from the laws of that state. I have been unable to locate a similar provision in the corporation laws of other states, although I have not made a search through the laws of every state of the Union.

If Section 914, Code 1915, providing for amendments to the articles of incorporation of a corporation has not been amended or modified by Chapter 76, Laws 1915, I am of the opinion that the language of the original section authorizes the filing of an amendment to the articles so as to change the class of corporation under the original act of incorporation to the class provided for in Section 907, that is, a corporation whose stockholders are excepted from liability in excess of the amount of the capital certified to have actually been paid in at the time of the commencement of business.

You will note that Section 914 permits amendments, changes, or alterations as may be desired. Section 1 of Chapter 76 of the Laws of 1915, while upon its face, it amends Section 914, (Sec. 31, Ch. 9, Ls. 1905), in its language it amends Section 915, (Sec. 32, Ch. 79, Ls. 1905).

We have heretofore held in this office that the use of the figures "Section 31" was a clerical or typographical error, and that the figures should be made to read "32" where 31 appears.

I have examined several authorities but find none directly in point. Under statutory provisions less broad than ours permitting amendments to articles of incorporation, it has been held that amendments may contain any provisions which an original charter may contain. *News-Register Co. vs. Rockingham Pub. Co.* 118 Va. 140, 86 S.E. 174: *In re Pennsylvania Stave Co.* 15 Pa. Dist. 603: *People vs. Rice*, 138 N.Y. 151, 33 N.E.

146; Bond vs. Atlanta Terra Cotta Co. 137 A. Div. 671, 122 N.Y. Sup. 125; People vs. May, 162 Ap. Div. 215, 147 N.Y. Sup. 487; In re Benedict Tea, etc., Co. 192 Fed. 1011; Page vs. Whittenton Mfg. Co. 211 Mass 424, 97 N.E. 1006; Mercantile Statement Co. vs. Kneal, 51 Minn. 263, 52 N.W. 262.

I, therefore, am of the opinion that the corporation in question may file amended articles of incorporation, which shall be accompanied by the certificate of stockholders non-liability, and thus take advantage of the provisions of Section 907, Code 1915.

This opinion, of course, only expresses my views as Attorney General, and may not be followed by the courts, in the event that the matter should be submitted to them. I have considerable confidence in the position I have taken, but do not want your client to take any step which might result in serious injury or damage to it upon the strength of the views herein expressed.