



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

May 18, 1939

Hon. Tom L. Beauchamp
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. 0-745
Re: Renewal of the charter of
Weatherford, Mineral Wells
& Northwestern Railroad Co.

Your request for an opinion as to the amount of the filing fee to be charged for the renewal of the charter of the Weatherford, Mineral Wells & Northwestern Railroad Company, and as to whether the renewal resolution and certificate should be submitted to the Attorney General's Department for examination and approval, has been received by this department.

Article 6268 of our Revised Civil Statutes expressly provides the manner for renewing the charter of a railroad corporation. None of the articles relating to railroads make any provisions for the filing fee of the renewal of a charter.

We think that the filing of the renewal resolution and certificate of this concern is an amendment to the original charter, and the filing fee is fixed by the terms of article 3914, of our Revised Civil Statutes.

Article 3914, Revised Civil Statutes, reads, in part, as follows:

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

"Upon filing each charter, amendment, or supplement thereto of a channel and dock, railroad, magnetic telegraph line, street railway or express corporation, a filing fee of two hundred (\$200.00) dollars, provided, that if the authorized capital stock exceeds one hundred thousand (\$100,000.00) dollars, an additional filing fee of fifty cents for each one

thousand (\$1,000.00) dollars authorized capital stock or fractional part thereof, after the first one hundred thousand (\$100,000.00) dollars shall be paid."

Your letter recites the capital stock of this corporation is \$100,000.00. The above article provides for filing fees of each charter, amendment or supplement thereto of certain corporations, among them "railroads" and we think this article is decisive of your first question. The filing fee is two hundred (\$200.00) dollars.

We call your attention to volume 13 of American Jurisprudence, section 85, page 228 which reads as follows:

"A mere extension of a corporate term of existence, made either before or after the expiration of the original term is uniformly held to constitute a continuation of the old and not the creation of a new corporation."

There are a good many cases as authority for the above statement, one of them being the case of Ohio Tie Co. v. Brunner, Secretary of State, 146 SW 749, a Kentucky case. We also find as a concurring authority on this question a former opinion by this department to the Hon. A. J. Power, Assistant Secretary of State, May 22, 1933, written by Pat Dougherty, Assistant Attorney General and found in opinion book No. 346, at page 529.

As to the submission of the renewal to this department for examination and approval, you are familiar with article 6263 of our Revised Civil Statutes, which reads as follows:

"The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States, or of this state, he shall attach thereto a certificate to that effect."

In view of our holding that this renewal is an amendment to the charter of the above corporation, we do not think that it is necessary to submit the renewal resolution to this department

Hon. Tom L. Beauchamp, page 3 (0-745)

for its examination and approval. We do not think article 6263 requires that it be done since this procedure is amendatory in character.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Morris Hodges
Morris Hodges
Assistant

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APPROVED:

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE

BY /s/ GRL
CHAIRMAN