

CORPORATIONS - Stockholders may, by proxy, waive notice of meeting.

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August 12, 1935



Honorable Russell Maloney
Corporation Commissioner
Secretary of State's Office
Jefferson City, Missouri

Dear Sir:

We have your request of August 8, 1935 for an opinion, which is as follows:

"Enclosed find amendment forwarded this office for the purpose of extending corporate existence and purporting to be drawn in accordance with the provisions of Section 1, page 297, Laws of Missouri, 1931, pertaining to the method of extending corporate existence.

"Section 1 provides in part as follows: 'In case such amendment in duplicate is signed, acknowledged and sworn to by all the stockholders, the notice of such meeting may be waived.'

"The within amendment purports to be signed by seven of the stockholders and one W. Palmer Clarkson, a stockholder, purporting to be a proxy representative of the remaining shareholders.

"Query: Does the acknowledgement and affidavit of the proxy holder

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comply with reference to the above quoted provision of Section 1?

"The opinion of your department in the above will be greatly appreciated."

The sole and only question raised by this request is whether stockholders can waive the notice of a meeting at which they were represented by proxy. The use of proxies for absent stockholders has long been recognized as a proper means of stockholders voting at any meeting of a corporation. Stockholders who so participate at a meeting by proxy would be estopped to later challenge the validity of that meeting. Such doctrine has been specifically laid down in this state. In Re: Mathiason Mfg. Co. (1907) 122 Mo. App. 437, l.c. 444, in the following language:

"The section further provides that 'at least two weeks' notice of the election shall be published in some newspaper printed at least once a week, in the city or county where the corporation is located,' etc. No such notice was published of the election. But as all the stockholders were present at the meeting, in person or by proxy, they are in no position to take advantage of the irregularity in failing to publish the notice of the meeting. (Jones v. Milton, and Rushville Turnpike Co., 7 Ind. l.c. 548; Columbia Nat. Bank v. Mathews, 85 Fed. l.c. 941; Kenton Furnace Railroad & Mfg. Co. v. McAlpin, 5 Fed. 737; State ex rel. v. Cook, 178 Mo. 189, 77 S. W. 559.)"

It will thus appear that if each of the stockholders had actual notice of the meeting and

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were present, they would be estopped to raise any question as to the failure to give the statutory notice prior to the convening of the corporation stockholders. In this case, stockholders in person and by proxy at the meeting would have the same authority to waive a notice of meeting.

It is, therefore, the opinion of this office that all the stockholders present in person and by proxy at a meeting may waive the notice of such meeting.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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