



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

March 23, 1953

Hon. Howard Carney  
Secretary of State  
Austin, Texas

Letter Opinion No. MS-11

Re: Necessity that all capital stock  
of Rio Bravo Oil Company, a cor-  
poration, incorporated in 1903,  
be paid in.

Dear Sir:

Your opinion request is in part as follows:

"Do the provisions of Article 1338 apply  
to corporations chartered prior to its enact-  
ment when such prior existing charters have  
been extended under Article 1315(a)?"

The particular corporation with which you are con-  
cerned is Rio Bravo Oil Company which was incorporated in  
1903 and has extended its charter under Article 1315(a),  
V.C.S.

Article 1338, V.C.S., provides:

"The stockholders of all corporations char-  
tered under the provisions of the preceding chap-  
ter shall, within two years from the date of the  
filing of such charter, pay in the unpaid portion  
of the capital stock of such company; proof of  
which shall, within said time, be made to the  
Secretary of State, in the manner provided in said  
articles, for the filing of charters."

Article 1315(a), V.C.S., provides in part as follows:

"Subject to a finding by the Secretary of  
State as hereinafter provided, any private corpor-  
ation organized or incorporated for any purpose or  
purposes authorized under this Title, at any time  
within ten (10) years prior to the expiration of  
its charter, or any extension thereof, may extend  
such charter and the corporate existence of such  
corporation for an additional period of not to ex-  
ceed fifty (50) years from the expiration date of  
the original charter, or any extension thereof,

with all the privileges, powers, immunities, rights of succession by its corporate name, and rights of property, real and personal, exercised and held by it at such expiration date, to the same intents and purposes as upon original incorporation.

". . ."

"The filing fee to be paid for any such extension of a charter shall be such fee as said corporation would be required under the Statutes of Texas to pay in the event it was then applying for a new charter instead of extending its then existing charter."

". . ." (Emphasis added.)

It is well established that the renewal of a corporate charter constitutes simply a continuation of the old corporation, rather than the creation of a new one. Flowers v. Pecos River R.R. Co., 138 Tex. 18, 27, 156 S.W.2d 260.

Thus, the extension of a corporate charter under the provisions of Article 1315(a) merely continues the old charter; the only effect being to extend the life of the corporation.

The Legislature, itself, was cognizant of this fact, for in Article 1315(a) it expressly provided that, in so far as fees to be paid were concerned, the extension was to be considered the same as an application for a new charter; and it clearly provided that "all the privileges, powers, immunities, rights of succession by its corporate name, and rights of property, real and personal, exercised and held by it at such expiration date, to the same intents and purposes as upon original incorporation" should be preserved to corporations extending their existence.

Article 1338 was enacted in 1907. Prior to that time, no provision of the Laws of Texas required a corporation to pay in its authorized capital stock.

It is well settled that a law will not be construed as retroactive unless the act clearly, by express language or necessary implication, indicates that the legislature intended a retroactive application. 2 Sutherland, Statutory Construction (3rd Ed. 1943) 115.

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In Article 1338 the legislature has not manifested an intention that the law should have retroactive application. Further, the Secretary of State has not required corporations incorporated prior to the enactment of Article 1338 to pay in all authorized capital stock. Forty-six years have elapsed since its enactment.

In view of the foregoing, it is our opinion that the extension of its corporate charter under Article 1315(a) by a corporation chartered prior to the enactment of Article 1338 is not the filing of a charter contemplated by Article 1338 and that said Article does not apply to corporations chartered prior to its enactment.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
William H. Holloway  
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WHH/rt:wb