

1980 WL 121023 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 22, 1980

***1 Re: Statement of Cancellation of Stock—Clarkson Brothers, Incorporated**

Mr. John P. Stokes
Deputy Secretary of State
Wade Hampton Office Building
Columbia, South Carolina 29201

Dear Mr. Stokes:

You have requested an opinion as to whether the retirement or cancellation of certain common stock by a corporation requires the filing of an amendment to the corporation's Articles of Incorporation. You have also requested an opinion as to the required fees associated with such retirement or cancellation.

I have reviewed the standard Articles of Incorporation form, and it appears that this form only requires the statement of the amount of authorized stock for the corporation, and not the amount of issued or outstanding stock. Therefore, unless the retirement or cancellation will bring about some change in the amount of authorized stock, the filing of an 'amendment' would not, in fact, amend any statement made in the Articles of Incorporation. Furthermore, Section 33-9-210, which sets forth the requirements for retirement or cancellation, merely requires in subsection (b) that a 'Statement of Retirement or Cancellation' be filed. There is no specific requirement in this section for the filing of an amendment to the Articles of Incorporation. Of course, if the corporation should desire to file such amendments, that would be permissible; however, it is not a requirement. In this regard, Section 33-15-10(14) provides that corporation may amend its Articles of Incorporation to cancel all or any part of its shares, whether issued or unissued.

Therefore, when the proposed retirement or cancellation of stock does not change the amount of authorized stock as indicated in the Articles of Incorporation, it would only be necessary to file a 'Statement of Retirement or Cancellation' as provided under Section 33-9-210. The appropriate fee for this transaction is provided in Section 33-29-30(17), i.e., Five (\$5.00) Dollars. If you should have any further questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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