

## CHAPTER 308

## COOPERATIVE ASSOCIATIONS

**308.01 ORGANIZATION.**

**HISTORY.** 1870 c. 29 ss. 1, 2; G.S. 1878 c. 34 ss. 155, 156; G.S. 1894 ss. 2903 to 2906; 1897 c. 351; R.L. 1905 ss. 3073, 3074; G.S. 1913 ss. 6479, 6482; G.S. 1923 ss. 7822, 7825; M.S. 1927 ss. 7822, 7825.

Modified by Laws 1919, Chapter 382.

Following *Finnegan v Norenberg*, 52 M 239, a de facto corporation exists where there is a law authorizing the creation of a corporation, an attempt to organize a corporation pursuant to it, and user as a corporation under such attempted organization. A substantial compliance with the law is not necessary; but there must be a colorable compliance with it followed, by a user. Oral testimony may be given to establish the existence of a de facto corporation. *Johnson v Okerstrom*, 70 M 303, 73 NW 147; *Byronville v Ivers*, 93 M 8, 100 NW 387.

There were irregularities in the various increases of stock from \$30,000 to \$400,000, but not beyond the power conferred by statute upon the corporation; and as defendant bought stock issued on the increase and received benefits accruing therefrom, he is liable as a stockholder. *MacLaren v Wold*, 168 M 234, 210 NW 29.

Stockholders of a cooperative association organized prior to the enactment of Laws 1919, Chapter 382, and which has not elected to come under the provisions of the 1919 law, cannot remove officers or directors at a meeting called for that purpose. *State ex rel v Kylmanen*, 178 M 164, 226 NW 401, 709.

To constitute a de facto corporation, there must be a valid law under which a corporation de jure may be formed; a bona fide or colorable attempt to incorporate; and a user of power. *Ebeling v Independent Rural Telephone*, 187 M 604, 246 NW 373.

Amendment of the articles of incorporation of a wholesale oil corporation so as to authorize it to engage in any mercantile, jobbing, wholesale or retail, mining, manufacturing or mechanical business, is a fundamental alteration of the corporation not comprehended within the reserved power to amend the articles. *Midland v Range*, 200 M 538, 274 NW 624.

Powers of cooperatives. *Frost v Corporation Commissioners*, 278 US 540, 49 SC 244.

Rural telephone companies desiring to incorporate as a cooperative association should do so under Laws 1923, Chapter 326, as amended, rather than endeavor to incorporate under section 308.33 (repealed). This is particularly true if such an association desires to enjoy the benefits, privileges and advantages of a cooperative. OAG March 24, 1934 (93b-33); 1938 OAG 110, Apr. 7, 1937 (93b-33).

Cooperatives; de facto corporations; directions as to the incorporation of cooperative creamery companies. 1938 OAG 107, Feb. 10, 1937 (93a-33).

Persons forming a corporation under the provisions of this chapter are not required to be residents of this state. 1938 OAG 115, Aug. 22, 1938 (93a-29).

Blue sky law. 3 MLR 155.

Cooperative and collective marketing. 9 MLR 2.

**308.02 CAPITAL; LIMIT OF INTEREST; SHARES.**

**HISTORY.** 1870 c. 29 ss. 5, 7, 8; G.S. 1878 c. 34 ss. 159, 161, 162; Ex. 1881 c. 13 s. 1; G.S. 1894 ss. 2907 to 2909; 1897 c. 351 s. 2; R.L. 1905 s. 3075; G.S. 1913 s. 6483; G.S. 1923 s. 7826; M.S. 1927 s. 7826.

Modified by Laws 1919, Chapter 382.

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Laws 1909, Chapter 298, changed defendant from a de facto corporation to a de jure corporation; but Laws 1870, Chapter 29, under which it was organized, still controls as to the powers of defendants and of its officers, and as to the rights of stockholders. The provision in Laws 1870, Chapter 29, that "no person shall be allowed to become a shareholder in such association except by the consent of the managers of the same", is valid and applies in the instant case. *Healey v Steele Center Creamery*, 115 M 451, 133 NW 69.

Where the irregularities are not beyond the power conferred by statute, a stockholder who bought stock and received benefits is not excluded from liability. *MacLaren v Wold*, 168 M 234, 210 NW 29; *MacLaren v Wold*, 172 M 334, 215 NW 428.

### 308.03 DISTRIBUTION OF PROFITS.

HISTORY. 1870 c. 29 s. 11; G.S. 1878 c. 34 s. 165; Ex. 1881 c. 13 s. 3; G.S. 1894 s. 2912; R.L. 1905 s. 3077; G.S. 1913 s. 6485; G.S. 1923 s. 7828; M.S. 1927 s. 7828.

A by-law which discriminates within reasonable limits between stockholders who deal with the company and those who do not, is not violative of the rights of the stockholders thus discriminated against, and the fact that for several years the company made an equal pro rata distribution of its provisions does not preclude the company from departing from that established custom. *Mooney v Farmers Merc. Co.*, 138 M 199, 164 NW 804.

### 308.05 WHO MAY ORGANIZE COOPERATIVE ASSOCIATIONS; PURPOSES; POWERS.

HISTORY. 1919 c. 382 s. 1; 1921 c. 23 s. 1; 1923 c. 326 s. 1; G.S. 1923 s. 7834; M.S. 1927 s. 7834; 1933 c. 148; 1941 c. 114 s. 1.

Law relating to the sale of securities as applied to cooperative associations. See section 80.05.

In the instant case the stockholder is not relieved from his liability because there were irregularities in the increase in the amount of capital stock, he having bought stock issued on the increase and received benefits accruing therefrom. *MacLaren v Wold*, 168 M 234, 210 NW 29.

The court acquired jurisdiction to assess the stockholders of an insolvent cooperative corporation, even though there was irregularity in the published notice of hearing and no proper proof of personal services upon the appellants. *In re Farmers Dairy Co.*, 177 M 211, 225 NW 22.

Stockholders of a cooperative association organized prior to the enactment of this section and which has not elected to come under its provisions, cannot remove officers or directors at a meeting called for that purpose. *State ex rel v Kylmanen*, 178 M 164, 226 NW 401.

Defendant, organized under Laws 1923, Chapter 326, is not exempt from the operation and effect of the carrier acts. *North Shore v North Shore*, 195 M 336, 263 NW 98.

Amendment of articles of incorporation of a wholesale oil corporation, attempted in the instant case, is not within its reserved power. *Midland v Range*, 200 M 538, 274 NW 624.

Non-member patrons of a cooperative company who become stockholders and assume the responsibilities incident thereto in order to participate in patronage cash refunds. 1934 OAG 182, Nov. 18, 1933 (93a-11).

Retail dealers are not ultimate producers or consumers referred to in Laws 1933, Chapter 148, and are prohibited from organizing a cooperative association. 1934 OAG 186, Jan. 15, 1934 (93a-29).

The use of the word "co-op" by a corporation that has not complied with the cooperative laws is a criminal offense. 1934 OAG 764, Nov. 15, 1934 (385a-2).

Where a new statute, not in the form of amendments to prior statutes, is complete in itself and shows that the legislature intended to substitute its provisions for those previously in force, and intended the new statute to prescribe the only rules governing the subject matter of the legislation, it superseded the prior legislation in respect to such subject matter and repeals all prior laws, in

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so far as they apply thereto. This rule applies to Laws 1919, Chapter 382. 1934 OAG 848, March 26, 1934 (93b-33).

Law relating to cooperatives; de facto; reorganization, expiration. 1938 OAG 107, Feb. 10, 1937 (93a-33).

Cooperatives; expiration of corporation term; transfer of all property. 1938 OAG 109, Jan. 31, 1938 (93a-8).

Cooperatives, amendment to by-laws, manner of origin. 1938 OAG 106, Jan. 5, 1938 (93a-4).

If no dividends or interest have actually been earned over and above operating costs and expenses, or if there has been an actual loss to the working capital, no dividend should be declared. 1938 OAG 111, Jan. 4, 1938 (93a-17).

Persons forming corporation under the provisions of Laws 1923, Chapter 326, are not required to be residents of this state. 1938 OAG 115, Aug. 22, 1938 (93a-29).

Grain assigned to a cooperative association for sale may be purchased by the cooperative and regular commission may be charged. OAG June 7, 1944 (215b-3).

The cooperative laws are not applicable to creation or operation of drainage districts. OAG Aug. 9, 1944 (93a-38).

A village cannot join a rural electrification cooperative, nor can a cooperative accept a franchise from a village and limit its sales to the village. OAG Jan. 2, 1945 (624c-10).

## **308.06 INCORPORATORS, NUMBER; ARTICLES OF INCORPORATION; FILING.**

HISTORY. 1919 c. 382 s. 2; 1921 c. 23 s. 2; 1923 c. 326 s. 2; G. S. 1923 s. 7835; M.S. 1927 s. 7835; 1941 c. 114 s. 2; 1943 c. 438 s. 1.

See annotations under section 308.05.

## **308.07 CAPITAL; LIMITS OF INTEREST; VOTE.**

HISTORY. 1919 c. 382 s. 3; 1921 c. 23 s. 3; 1923 c. 326 s. 3; G.S. 1923 s. 7836; M.S. 1927 s. 7836; 1933 c. 148; 1941 c. 114 s. 3.

The matter of the organization of a corporation is regulated by statute, and its requirements as to the amount of capital stock which must be subscribed and paid for is a material prerequisite. *Zander v Holm*, 159 M 51, 197 NW 967.

The provision in this section for forfeiting and retiring the stock of an offending stockholder does not free him from the constitutional double liability. *Zander v Peterson*, 174 M 427, 219 NW 466.

Findings that a member of a corporation did not by conduct assent to an attempted amendment of the articles are final on appeal. The amendment of the articles of a wholesale oil corporation authorizing it to engage in any mercantile, jobbing, wholesale and retail, mining, manufacturing or mechanical business is a fundamental alteration not comprehended within the reserved power to amend the articles. *Midland v Range*, 200 M 538, 274 NW 624.

The law does not permit the payment of patronage dividends to non-members, except by way of credit upon the purchase of stock. 1934 OAG 182, Nov. 18, 1933 (93a-11).

Cooperative telephone associations properly should be organized under the provisions of Laws 1919, Chapter 382, as amended by Laws 1933, Chapters 40 and 148. 1934 OAG 848, March 26, 1934 (93b-33).

Where a mailed ballot is used, the amendment to either the articles of incorporation or by-laws should originate with the board of directors. 1938 OAG 106, Jan. 5, 1938 (93a-4).

Voting by mail. 1940 OAG 3, April 18, 1939 (93a-30).

Where the authorized capital stock falls below 20 per cent the association may be dissolved in an action by the state. OAG Jan. 13, 1936 (93a-18).

Stock issued in excess of the authorized capital is void, and stockholders have no voting right. OAG July 10, 1939 (93a-37).

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Where capital stock is increased and stock issued, the holders of such stock have the privilege of voting even though there was a failure to make proper filing with the register of deeds. OAG Aug. 3, 1939 (93a-37).

A cooperative association organized under Laws 1919, Chapter 382, and whose term has not expired, may increase its debt limit by following the provisions of Laws 1919, Chapter 382, although it has not elected to come under Laws 1923, Chapter 326. OAG Nov. 1, 1944 (93a-2).

Stockholders' liability. 7 MLR 81.

Constitutional liability after forfeiture. 13 MLR 61.

### 308.08 APPLICATION.

HISTORY. 1935 c. 231; M. Supp. s. 7836-1.

### 308.09 STOCKHOLDERS' MEETINGS; REGULAR AND SPECIAL.

HISTORY. 1919 c. 382 s. 4; 1921 c. 23 s. 4; 1923 c. 326 s. 4; G.S. 1923 s. 7837; M.S. 1927 s. 7837.

### 308.10 QUORUM.

HISTORY. 1919 c. 382 s. 5; 1921 c. 23 s. 5; 1923 c. 326 s. 5; G.S. 1923 s. 7838; M.S. 1927 s. 7838; 1937 c. 153 s. 1.

The original company was incorporated for \$30,000 and it was provided that debts might be incurred to the amount of the capital stock legally issued. The amount of the authorized indebtedness is increased in proportion to the increase in the authorized capital. This defendant is liable on his constitutional double liability for his shares of stock, which were a part of the increase to \$100,000; but the increase of from \$100,000 to \$400,000 was invalid, and the defendant was not liable for stock issued under the final increase of capital. *MacLaren v Wold*, 168 M 234, 210 NW 29; *MacLaren v Wold*, 172 M 334, 215 NW 428.

As member cooperatives in meetings of a central cooperative, vote is by units, the number of representatives elected to the meeting of the central cooperative is immaterial. OAG April 18, 1939 (93a-30).

A cooperative wishing to qualify under the business corporation act may do so by a majority vote. OAG June 22, 1939 (93a-2).

### 308.11 DIRECTORS; OFFICERS.

HISTORY. 1919 c. 382 s. 6; 1921 c. 23 s. 6; 1923 c. 326 s. 6; G.S. 1923 s. 7839; M.S. 1927 s. 7839.

Stockholders of a cooperative association organized prior to Laws 1919, Chapter 382, and which has not elected to come under the provisions of that law, cannot remove officers or directors at a meeting called for that purpose. *State ex rel v Kylmanen*, 178 M 164, 226 NW 401, 709.

Vacancy in board of directors may not be filled by board of directors. OAG March 21, 1939 (93a-9).

### 308.12 EARNINGS; RESERVE FUND; DISTRIBUTION.

HISTORY. 1919 c. 382 s. 7; 1921 c. 23 s. 7; 1923 c. 326 s. 7; G.S. 1923 s. 7840; M.S. 1927 s. 7840; 1941 c. 114 s. 4.

Under the bituminous coal act authorizing sale of coal at discount from established mining prices to a bona fide and legitimate farmers cooperative, the description of a particular type of cooperative which is being excepted from general prohibitions necessarily excludes other types upon the principle of *expressio unius est exclusio alterius*. *Midland v Ickes*, 125 F(2d) 618.

Where the defendant corporation was used as a device to pay prices for butter in Minnesota in excess of maximum price established under the price control act, venue for injunction was properly laid in federal court, district of Minnesota. *Bowles v Schreiber*, 56 F. Supp. 914.

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Patronage dividends may not be paid in cash, but only by way of credit on stock. OAG Nov. 18, 1933.

Cooperative welfare boards have no authority to issue orders, rules or regulations which contravene the provisions of this section. OAG April 13, 1938 (125a-64).

## 308.13 PROMOTION EXPENSE NOT TO BE INCURRED.

HISTORY. 1919 c. 382 s. 9; 1921 c. 23 s. 9; 1923 c. 326 s. 9; G.S. 1923 s. 7841; M.S. 1927 s. 7841.

## 308.14 CERTAIN ASSOCIATIONS MAY COME WITHIN PROVISIONS.

HISTORY. 1919 c. 382 s. 11; 1921 c. 23 s. 11; 1923 c. 326 s. 10; G.S. 1923 s. 7843; M.S. 1927 s. 7843; 1941 c. 114 s. 5.

See annotations under section 308.10.

A corporation whose term has expired cannot extend its life except by way of a curative act. OAG Feb. 10, 1937 (93a-33).

A corporation whose period of existence has expired may transfer all of its assets to a new cooperative association in consideration of the issuance of new stock, provided old shareholders who had not consented to the exchange must be paid the par value of their shares in cash. OAG Jan. 31, 1938 (932-8).

## 308.15 AMENDING ARTICLES OF INCORPORATION.

HISTORY. 1919 c. 382 s. 12; 1921 c. 23 s. 12; 1923 c. 26 s. 11; G.S. 1923 s. 7844; M.S. 1927 s. 7844; 1941 c. 114 s. 6.

See annotations under section 308.10.

A provision limiting ownership of capital stock to \$75.00 par value may be amended to limit such ownership to \$50.00, but the modification would not affect the rights of existing shareholders. OAG Feb. 23, 1933.

Cooperative associations may not amend their articles to permit membership of companies doing a non-cooperative business. OAG June 9, 1933.

Resolution of the cooperative taking advantage of laws authorizing it to extend its existence must contain the jurisdictional requisites set forth in the curative or enabling act. OAG Aug. 28, 1939 (93a-2).

A contract between a cooperative and its members is evidence of its articles of incorporation and by-laws. A right to share in the dissolution of the cooperative cannot be abrogated by an amendment. OAG Sept. 5, 1939 (32a-22).

On election to come under Laws 1923, Chapter 326, as amended, a corporation whose articles had heretofore been filed with the register of deeds must attach its articles or a certified copy to the certificate of election when filing with the secretary of state. OAG Feb. 17, 1944 (93a-2).

A cooperative association under Laws 1919, Chapter 382, whose corporate term has not expired, and which has not elected to come under Laws 1923, Chapter 326, may amend its articles and increase the amount of its debt limit. OAG Nov. 1, 1944 (93a-2).

## 308.16 COMPANIES EXCEPTED.

HISTORY. 1919 c. 382 s. 13; 1921 c. 23 s. 13; 1923 c. 326 s. 12; G.S. 1923 s. 7845; M.S. 1927 s. 7845.

The proxies of paid up members may be voted. OAG Feb. 14, 1945 (102).

## 308.17 REPEALS; CONTINUANCE OF GOVERNMENT.

HISTORY. 1919 c. 382 s. 14; 1921 c. 23 s. 14; 1923 c. 326 s. 13; G.S. 1923 s. 7846; M.S. 1927 s. 7846.

## 308.18 APPLICATION.

HISTORY. 1923 c. 326 s. 14; G.S. 1923 s. 7847; M.S. 1927 s. 7847.

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### 308.29 POWERS EXTENDED.

HISTORY. 1907 c. 293 s. 1; 1909 c. 456 s. 1; G.S. 1913 s. 6887; 1919 c. 82 s. 1; G.S. 1923 s. 7830; M.S. 1927 s. 7830.

### 308.30 OFFICERS; BY-LAWS; AMENDMENT OF ARTICLES.

HISTORY. 1907 c. 293 s. 2; G.S. 1913 s. 6488; G.S. 1923 s. 7831; M.S. 1927 s. 7831; 1933 c. 330 s. 1.

A corporation which did not elect to come under the provisions of Laws 1919, Chapter 382, cannot remove officers or directors at a meeting called for that purpose. State ex rel v Kylmanen, 178 M 164, 226 NW 401, 709.

Creamery companies organized under section 308.34 may not file amended articles with the secretary of state under section 308.34. OAG April 17, 1937 (93b-10).

This section is applicable only to cooperative companies organized under section 308.29. OAG Aug. 3, 1939 (93a-2).

### 308.31 STOCK IN OTHER CORPORATIONS.

HISTORY. 1907 c. 293 s. 3; 1909 c. 280 s. 1; G.S. 1913 s. 6489; G.S. 1923 s. 7832; M.S. 1927 s. 7832.

### 308.32 RURAL TELEPHONE COMPANIES; PLACE OF BUSINESS; STOCK-HOLDERS' MEETINGS, WHERE HELD.

HISTORY. 1911 c. 360 s. 1; G.S. 1913 s. 6490; G.S. 1923 s. 7833; M.S. 1927 s. 7833.

The owner of stock is entitled to vote at a stockholders' meeting even if his ownership is not recorded on the books of the association. OAG Jan. 15, 1934.

### 308.34 MAY ENGAGE IN ANY LAWFUL ENTERPRISE.

HISTORY. 1870 c. 29 ss. 1, 2; G.S. 1878 c. 34 ss. 155, 156; G.S. 1894 ss. 2903; 2904; 1897 c. 351; 1905 c. 276; 1905 c. 313 s. 1; R.L. 1905 s. 3073; G.S. 1913 s. 6481; G.S. 1923 s. 7824; M.S. 1927 s. 7824; 1943 c. 318 s. 2.

### 308.35 CORPORATE EXISTENCE OF CERTAIN COOPERATIVE ASSOCIATIONS RENEWED.

HISTORY. 1935 c. 116 s. 1; M. Supp. s. 7833-1.

### 308.37 COOPERATIVE ASSOCIATIONS OR CORPORATIONS MAY PURCHASE AND OWN STOCK OF CERTAIN OTHER CORPORATIONS.

HISTORY. 1927 c. 25 s. 1; M.S. 1927 s. 7843-3.

### 308.39 CREAMERY ASSOCIATIONS MAY ACQUIRE EASEMENTS FOR SEWERS AND SITES FOR FILTRATION PLANTS BY CONDEMNATION.

HISTORY. 1927 c. 179 s. 1; M.S. 1927 c. 7859-1.

### 308.40 SUPERVISION OF SEWERS AND FILTRATION PLANTS BY BOARDS OF HEALTH.

HISTORY. 1927 c. 179 s. 2; M.S. 1927 s. 7859-2.

### 308.41 CERTAIN COOPERATIVE CREAMERY ASSOCIATIONS CONTINUED; RESOLUTION, WHERE FILED.

HISTORY. 1933 c. 358 ss. 1, 2; M. Supp. ss. 7859-13, 7859-14.

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Cooperative creamery associations organized under Revised Laws 1905, Section 3073, may renew their corporate existence without complying with Laws 1923, Chapter 326. OAG March 9, 1939 (93b-10).

## 308.42 COOPERATIVE ASSOCIATION DEFINED.

HISTORY. 1919 c. 382 s. 1; 1921 c. 23 s. 1; 1923 c. 326 s. 1; G.S. 1923 s. 7834; M.S. 1927 s. 7834; 1933 c. 148; 1941 c. 114 s. 1.