

CHAPTER 308

COOPERATIVE ASSOCIATIONS

308.01 ORGANIZATION.

Cooperatives distributing to their customers electricity purchased from municipal light plants are "public utilities." *Meeker Assn. v Phillips*, 158 F(2d) 698.

Blue sky law. 3 MLR 155.

Cooperative and collective marketing. 9 MLR 2.

308.05 WHO MAY ORGANIZE COOPERATIVE ASSOCIATIONS; PURPOSES; POWERS.

A by-law, though not expressly authorized by statute or the articles of incorporation, may operate as a contract between the corporation and its members so as to be binding on both. By surrendering his original certificate of membership and accepting one making his membership subject to the limitations contained in the by-laws, plaintiff made them part of his contract with defendant. *Strong v Mpls. Auto. Assn.* 151 M 406, 186 NW 800.

An association cannot expel a member without an opportunity to be heard, particularly where his property rights will be affected by his expulsion. The rule holds good where cause for expulsion is conceded but expulsion is discretionary. *Strong v Mpls. Auto. Assn.* 151 M 406, 186 NW 800.

To constitute a franchise the right possessed must be such as cannot be exercised without the express permission of the sovereign power, a privilege or immunity of a public nature which cannot be legally exercised without legislative grant; and in the instant case, examination of the record establishes that the defendant was lawfully organized and has ever since its organization operated in accordance with the provisions of the statute. *Gen'l Minn. Utilities v Carlton Co. Coop. Power Assn.* 221 M 510, 22 NW(2d) 673.

A corporation, though insolvent, may, where it has possession and control of its property, and in the absence of fraud or statutory restriction, prefer one of its general creditors over the others by a deed of trust on its property or by mortgage, sale, assignment, or otherwise in the same manner and to the same extent as can an individual debtor, so long, at least, as such preferment does not deprive the corporation of the power to continue in its due course of business and render it necessary for it to suspend. *Farmers Coop. v Kotz*, 222 M 153, 23 NW(2d) 576.

The rule denying the right of officers or directors to secure preference applies, although they are bona fide creditors, and to officers de facto as well as officers de jure. The rule cannot be evaded by resignation of an officer shortly before the execution of the security constituting a preference. *Farmers Coop. v Kotz*, 222 M 153, 23 NW(2d) 576.

In an action by plaintiff to enjoin defendant from purchasing for its own account grain consigned to defendant for sale as a commission merchant, the defendant, a cooperative association formed under the provisions of sections 308.05 to 308.18, and licensed as a commission merchant by the state railroad and warehouse commission, is exempt from the provisions of sections 223.09 and 223.10 which forbids any individual or corporation doing business as a commission merchant from buying on its own account grain consigned to it for sale as such commission merchant. *Clinton Assn. v Farmers Union*, 223 M 253, 26 NW(2d) 118.

Based on the provisions of sections 308.05 and 223.09 and construed under the provisions of section 645.26, a contract between a customer or shipper on one hand and a cooperative association on the other, may permit a cooperative associa-

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tion licensed as a commission merchant to buy grain consigned to it for sale by its members or patrons and charge regular commission. 1944 OAG 294, Jan. 17, 1944 (215-B-3); 1944 OAG 295, June 7, 1944 (215-B-3).

A corporation organized under section 308.05 may continue during its corporate period. If it elects to come under the 1933 amendment it must then comply with all the provisions and limitations of the 1933 law. OAG Nov. 1, 1944 (93-A-2).

A corporation incorporated under the provisions of laws other than sections 308.05 et seq., and whose articles and amendments are filed with the register of deeds only, the original articles and amendments or certified copies thereof must be annexed to proposed certificate of election amendment to come under provisions of sections 308.05, et seq., and filed with the secretary of state. OAG Feb. 17, 1944 (93-A-1).

A cooperative under section 308.05 may determine patronage refund on the basis of the combined dollar value of all commodities purchased or sold irrespective of type or grades. OAG Aug. 27, 1945 (93-A-11).

There is no statutory authority permitting corporations organized under the social, charitable, and the like provisions to come under the provisions of sections 308.05 et seq. OAG May 10, 1945 (93-A-2).

The board of directors may sell a portion of the corporation's property without consent of the stockholders. OAG June 19, 1946 (93-a-47).

308.06 INCORPORATORS; NUMBER; ARTICLES OF INCORPORATION, FILING.

If intent of amendment is made plain by reference amended articles need not be complete, but if the directors state in the resolution of amendment the complete articles as amended, then such articles must contain all things required by section 308.06. OAG July 17, 1946 (93-A-2).

308.07 CAPITAL; LIMITS OF INTEREST; VOTE.

Stockholders' liability. 7 MLR 81.

Constitutional liability after forfeiture. 13 MLR 61.

308.08 APPLICATION.

It is necessary for cooperative associations organized prior to 1933, and desirous of operating under the two sections of L. 1923, c. 326, as amended in 1935, to amend their charters as required by L. 1935, c. 231. It is advisable for cooperatives organized under L. 1919, c. 382, and L. 1921, c. 23, or other sections of the present cooperative statutes, and electing to come under amendments to the laws under which it was granted its charter to amend its articles pursuant to Minnesota Statutes 1941, ss. 308.14 and 308.15. 1944 OAG 27, Aug. 3, 1944 (93-A-33).

A cooperative association which did not elect to come under the provisions of L. 1923, c. 326, may increase its debt limit or otherwise amend its articles under the provisions of L. 1919, c. 382, the law under which it was incorporated, and its original corporate term not having expired. OAG Nov. 1, 1944 (93-a-2).

308.09 STOCKHOLDERS' MEETINGS; REGULAR AND SPECIAL.

Subd. 1 amended by L. 1947 c. 61 s. 1; L. 1947 c. 354 s. 1.

Subd. 2 amended by L. 1947 c. 61 s. 2.

Liability of transferee on obligations of transferrer in case of sale of assets. 18 MLR 597.

308.11 DIRECTORS; OFFICERS.

A person not a producer or consumer cannot qualify as a bona fide member; and the board must be composed of individual members, or elected or appointed

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representatives of local constituent or affiliated cooperative associations. OAG Oct. 5, 1942 (93-A-9).

308.12 EARNINGS; RESERVE FUND; DISTRIBUTION.

Distribution of patronage income must be general and of equal ratio as to all classes of service and commodities. Preference cannot be given to any particular class, service, or commodity. OAG May 4, 1945 (93-A-10); OAG Aug. 27, 1945 (93-A-11).

308.14 CERTAIN ASSOCIATIONS MAY COME WITHIN PROVISIONS.

See, 1944 OAG 27, Aug. 3, 1944 (93-A-33), noted under section 308.08.

Associations organized prior to 1919 continued under the laws of incorporation unless and until they elect to come under the provisions of section 308.05, and in the instant case, the association has no power to remove officers or directors at a meeting called for that purpose. *State ex rel v Kylmanen*, 178 M 164, 226 NW 401, 709.

Certificate of voluntary dissolution of association must set forth the resolution and the manner of adoption. OAG Oct. 29, 1943 (93-A-10).

308.15 AMENDING ARTICLES OF INCORPORATION.

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

If the board states in its resolution of amendment the complete articles as amendment, there must be complete compliance with the provisions of section 308.06; but if the intent is made plain the amended articles may be sufficiently amended by reference. OAG July 17, 1946 (93-A-2).

If full compliance is made following provisions of section 308.06, the amendment need not show names and addresses of any persons composing boards of directors except those shown in the original articles. OAG July 17, 1946 (93-A-2).

308.30 OFFICERS; BY-LAWS; AMENDMENT OF ARTICLES.

The custom followed for many years of making equal distribution of profits without discrimination did not preclude the company from departing from such custom, nor deprive it of the right to enact a by-law providing a different mode of distribution favoring stockholders who deal with the company over those who do not. *Mooney v Farmers Mercantile*, 138 M 199, 164 NW 804.

308.36 CORPORATION ORGANIZED DEFECTIVELY.

HISTORY. 1947 c. 510 ss. 1 to 3.

308.361 COOPERATIVE CORPORATION DEFECTIVELY ORGANIZED.

HISTORY. 1947 c. 513 ss. 1 to 4.

308.42 COOPERATIVE ASSOCIATION DEFINED .

What constitutes a cooperative association. *Words and Phrases*, Vol. 9, p. 624; *Finnegan v Nuereberg*, 52 M 239, 53 NW 1150; *Mooney v Farmers Mercantile*, 138 M 199, 164 NW 804.

Merchants and manufacturers are not ultimate producers or consumers within the meaning of section 308.42 and may not organize a cooperative trucking association under the provisions of sections 308.05 to 308.18. OAG Nov. 19, 1946 (93-B-34).