

No. 348

**CORPORATIONS, amendment of articles of—
COOPERATIVE ASSOCIATIONS**

Held: Amendment of articles of incorporation of general corporation, functioning much as a cooperative association, so as to permit it to continue the same type of business acting as a cooperative, where fundamental changes do not occur, may be made under Section 5918, Revised Codes of Montana, 1935.

January 27, 1942.

Mr. Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Mitchell:

The Molt Farmers' Elevator Company, incorporated under general statutes (Section 5900, Revised Codes of Montana, 1935, et seq.), seeks to amend its articles so as to become a cooperative association under Chapter 38 of the Civil Code. You ask whether such an amendment may be permitted.

You properly make this inquiry because of the quasi-judicial judgment with which you are vested in regard to these matters. (Barnett Iron Works v. Harmon, 87 Mont. 38, 285 Pac. 191.)

The authority for such an amendment, if any exists, is found in Section 5918 of the Revised Codes of Montana, 1935. That section states:

"Amendment of articles of incorporation—purposes. Any corporation organized under any of the laws of the state of Montana heretofore or hereafter, whether formed and existing before or after the taking effect of the Codes of July 1, 1895, may, in the manner herein provided, amend its articles of incorporation by changing the name, place of business or number of directors, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, by extending its term of existence within the limits provided by law, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto."

Section 6012, Revised Codes of Montana, 1935, provides:

"Scope of corporation laws. The provisions of sections 5900 to 6013 of this code are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special pro-

vision is made in relation thereto inconsistent with some provision in said sections, in which case the special provision prevails."

See also:

15 Opinions of the Attorney General, No. 451.

Under Section 5918, supra, it appears **any corporation** may amend its articles within the limits prescribed. Where the word "any" is used, it should not be unduly limited. (Vol. 16, Opinions of the Attorney General, No. 348.)

The question then is: Do the proposed amendments exceed the limitations of Section 5918?

The scope of business activity proposed in this cooperative plan is practically the same as that now authorized by the original articles of incorporation. The proposed amendments limit stockholders to one voting share and profits are distributed on the basis of patronage rather than the amount of money invested by each stockholder. Investigation reveals that, in practical operation, the corporation has functioned in the past much as a cooperative association.

Ordinarily, the power of amendment does not comprehend change to such an extent as to make an entirely different kind of corporation.

Mower v. Staples, 32 Minn. 284, 20 N. W. 225;

Perkins v. Coffin, 84 Conn. 275, 79 A. 1070;

14 C. J. 188;

7 Fletcher, Cyc. Corporations, 886, 887, Sec. 3718;

1 Thompson on Corporations (3rd. Ed.), Section 400.

No exact formula for the determination of what changes are fundamental can be stated. (Midland Co-operative Wholesale v. Range Co-operative Oil Ass'n., 200 Minn. 538, 374 N. W. 624.) Each case must be dealt with in the light of its particular facts. Amendments are not fundamental when they are designed to enable the corporation to conduct its authorized business with greater facility and when they are auxiliary to the original object of the corporation.

Wright v. Minn. Mutual Life Ins. Co., 193 U. S. 657, 24 S. Ct. 549; 48 L. Ed. 822;

State v. Taylor, 55 Ohio St. 61, 44 N. E. 513;

Cook Corporations, Sec. 501.

I cannot say the powers proposed in the amendments differ from or over-shadow the original powers and purposes so as to work a fundamental change in the purposes of the corporation.

I am, therefore, of the opinion the amendments should be permitted.

This conclusion is not inconsistent with that reached in Vol. 16, Opinions of the Attorney General, No. 346, and in no way should be construed to mean that a general corporation may, in all cases, by amendment, become a cooperative association. This opinion is based exclusively upon the particular facts here involved.

Sincerely yours,

JOHN W. BONNER
Attorney General