

**Cooperative Associations—Fees—Capital Stock—Articles of Incorporation—Corporations.**

A cooperative association organized under chapter 25 of part III of the civil code of Montana of 1921 is not governed by the general corporation act and no filing fee should be charged by the secretary of state. Amendments to the articles of incorporation should be filed in the same manner as the original articles.

C. T. Stewart, Esq.,  
Secretary of State,  
Helena, Montana.

January 14, 1927.

My dear Mr. Stewart:

You have requested my opinion on the following questions:

"A farmers' cooperative elevator company, organized under the provisions of chapter 25, civil code of Montana of 1921, has tendered its papers for an increase in membership of the corporation, which is virtually an increase in capital stock of the corporation, and as the cooperative association law above referred to does not provide a fee for such increase in membership or increase in capital stock, should this increase in capital stock be assessed at the regular charge stated in section 145, R. C. M. 1921, and if not, what fee am I authorized under the law to make?"

"Should the original papers be filed with the county clerk and recorder and a certified copy with this office, as provided in the general corporation act, or should amendments under the cooperative act be filed in the same manner as the original papers, to-wit, original with the secretary of state, and a copy certified by him with the county clerk and recorder?"

From an examination of chapter 25 of part III of the civil code of Montana of 1921, governing the organization and management of cooperative associations, it will be noticed that no provision for the increase of the capital stock of the association is provided for. The reason for this is that in organizations of this kind the stock represents membership rather than the assets of the corporation.

Thus section 6376 of said act prohibits any person from owning more than one share of said stock, and section 6382 provides that a certain per cent of the association earnings may be paid to non-members, meaning non-stockholders. Further, while no provision is made for increasing the capital stock, yet section 6384 provides for increasing the membership of the association, and since membership in the association is limited to those owning a share of the association stock, it necessarily follows that an association whose stock has all been allotted to members must increase its stock in order to increase its membership.

It would therefore appear that an increase of membership necessarily carrying with it an increase of stock as in the case of the association in question is not such an increase of stock as contemplated by the provisions of the general corporation act, it apparently being the intention of the legislature that associations of this kind should be governed entirely by the provisions of the act itself.

This conclusion finds support in the fact that section 145, R. C. M. 1921, to which you refer, provides "that no fee for filing any articles of incorporation or increase of capital stock shall be less than fifty dollars," while the original filing fee for cooperative associations provided for in the act in question is only five dollars.

There is no provision in the act itself authorizing the collection of any fee for filing amendments providing for the increase of membership and since an officer is only allowed to collect those fees provided for by law no fee should be charged for filing these amendments.

In regard to the filing of the amendments since no provision is made as to the manner in which this should be done, the amendments should be filed in the same manner as that provided for the original articles of incorporation, to-wit, original with the secretary of state and a copy certified by him with the county clerk and recorder.

Very truly yours,

L. A. FOOT,  
Attorney General.