

Opinion No. 634**Grazing Districts—Incorporators,
Qualifications of.**

HELD: The incorporators of a grazing district must not only own lands but must own lands within the proposed grazing district.

October 29, 1934.

Your letter to us of the 25th inst., is in part as follows:

“Your opinion is respectfully requested as to whether cooperative grazing associations created under the provisions of Chapter 66, Laws of 1933, may be incorporated by others than holders of land in the district.

“I understand from Section 2 of the above chapter that to become an incorporator one must be a ‘qualified person’ and from subdivision 6 of Sec. 2 and also Sec. 4 and the reading of the entire act I have concluded that the three or more persons mentioned in Sec. 1 are not eligible to incorporate unless they are land owners. For the future guidance of this office it will be appreciated if you will give me your opinion upon this point.”

Sections 1, 2, 3, 4 and 5 of Chapter 66, Laws of 1933, provide:

“1. A corporation, mutually operated, for the purpose of aiding in the conservation of natural forage resources within a designated area to be jointly used by its members, and for aiding in the restoration and improvement of lands which may be acquired by lease or purchase from political subdivision or from others, shall be known in this Act as a ‘Cooperative Grazing Association.’

“Lands acquired by such an association and utilized by its members for grazing purposes under such definite restrictions and limitations as shall contribute to the conservation, restoration, and improvement of the forage resources of such lands, shall be known as a ‘Cooperative Grazing District.’

"Three or more persons residing within the State of Montana may incorporate under this Act.

"2. Whenever three or more qualified persons shall desire to incorporate a Cooperative Grazing District, having for its object the utilization, conservation, restoration, and improvement of forage resources on their land or upon lands to be acquired by such association by purchase or lease, they shall prepare and file articles of incorporation to that effect in the office of the Secretary of State in the manner in this Act specified; such articles shall be signed, sealed and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate, and shall include the following:

"1. The name of the association.

"2. The purpose for which it is formed.

"3. The county or counties in which such district is located and the principal office or place of business in the state.

"4. The membership fee, which shall in no case be greater than Five Dollars.

"5. The term for which such association is incorporated, not exceeding forty years.

"6. The names and residences of the persons who subscribed to and acknowledged such articles of incorporation, together with the legal description of the lands owned by them.

"7. Names and residences of those who have subscribed for membership with a description of the lands of each.

"3. Each association organized under this Act shall have the following powers:

"1. To lease or acquire, by purchase or otherwise, lands for grazing purposes or for raising forage crops and to dispose of such lands purchased by trade, sale, or otherwise.

"2. To construct or acquire fences, reservoirs, or other facilities for the care of livestock.

"3. To lease from the county or counties in which the Cooperative Grazing District is located, land acquired by such county or counties through tax sale or otherwise, which

is located in or contiguous thereto and not already under lease.

"4. To apportion to members grazing rights within such district on such terms, conditions and limitations as may be specified by the directors thereof, or in accordance with the terms and limitations imposed for the purpose of conservation, restoration and improvement of forage resources in the leasing of county, state or federal land.

"4. Any person owning land within or contiguous to the proposed boundaries of any Cooperative Grazing District, set up by any association incorporated under this Act, shall be entitled to become a member thereof by paying the membership fee and by subscribing to the by-laws and by complying with the regulations and limitations determined by the directors thereof or by the terms of lease of leased lands included therein. The membership fee, which shall be fixed and determined by the directors of such associations, shall in no case exceed Five Dollars.

"When any member shall dispose of lands owned by him within or contiguous to the Cooperative Grazing District so that he is no longer the owner of lands so within or contiguous, then he shall cease to be a member of such association and his rights and interests in the association shall be determined by the directors thereof. When any member shall dispose of a part of the lands owned by him so that another individual or other individuals shall by the purchase and ownership of such lands acquire right to membership, then the rights and interests involved shall be determined by the Board of Directors.

"Each member shall have one vote.

"5. Cooperative Grazing Associations organized under this Act shall, upon completion of organization and incorporation, file with the County Clerk of the county or counties in which such lands lie, a map or plat of the grazing district proposed to be created. If such district shall contain land situated in more than one county, then a map or plat of such grazing district shall be filed with the County Clerk of each county. Whenever any Incorporated Grazing Association shall enlarge or reduce the

area included within its district, or change or modify its boundaries, it shall file with the County Clerk or Clerks, a map or plat to indicate such changed boundaries."

The articles of incorporation show on their face that one of the incorporators does not own "any real estate." We think the necessary implication from the language of the law as quoted is that the incorporators must not only own lands but lands within the proposed grazing district. To contend otherwise would do violence to the intent of the legislature. That which is implied in a statute is as much a part of it as that which is expressed. (*State v. Riedel*, 46 S. W. (2d) 131; *Colorado & S. Ry. Co. v. City of Ft. Collins*, 121 Pac. 747; 2 Lewis' *Sutherland Statutory Construction* sec. 500, p. 933; 25 R. C. L. sec. 228, p. 978; 59 *Corpus Juris* sec. 575, p. 972.)

In this state corporations are creatures of statute and can be brought into existence only by substantial compliance with statutory provisions. The statute is in the nature of a grant of the right to exercise corporate franchises to such persons as may comply with its terms. The instrument called "articles of incorporation" constitutes the evidence of the acceptance of the terms and conditions contained in the statute. The requisites of the instrument are clearly stated in section 2 of the Act. If any one of these is omitted, such omission is a fatal defect and no de jure right to exercise corporate franchises exists. It is essential, therefore, to the right to file articles of incorporation of the kind in question here that they include, among other things, "the names and residences of the persons who subscribed to and acknowledged such articles of incorporation, together with the legal description of the lands owned by them." (*Bates v. Wilson*, 24 Pac. 99; *Merges v. Altenbrand*, 45 Mont. 355; *Martin v. Deetz*, 36 Pac. 368; *In re Daughters of Israel Orphan Aid Society*, 210 N. Y. S. 541; 1 *Fletcher's Cyclopaedia Corporations* secs. 129, 131, 144, 145 and 156; 14 C. J. 118-120.)

An additional reason may be urged against the filing of the articles of incorporation and that is that they do not comply with the provisions of subdivision 7 of said section 2.