

**Opinion No. 24.****Grazing Districts, Qualifications  
of Incorporators.**

HELD: 1. The incorporators of a co-operative grazing association must own lands within the district.

2. Only a natural person of either sex may become a member of an incorporated grazing association.

3. Section 12 of Chapter 66, Laws of 1933, is of doubtful validity insofar as it differentiates between persons who own land and livestock of an assessed value of at least \$2,500 and persons who own land and livestock of a lesser assessed value.

January 9, 1935.

Mr. Fred C. Gabriel  
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You have asked us to give you a construction of Chapters 65, 66 and 67, Laws of 1933. We shall attempt to do so in a somewhat limited way.

Chapter 65 and Chapter 66 were introduced on February 7, 1933, and designated as Senate Bill No. 126 and Senate Bill No. 127, respectively. Chapter 67 was introduced on February 8, 1933, and designated as Senate Bill No. 128. Chapter 65 relates to the selling, leasing and exchanging of and quieting title to lands acquired by a county through tax deed. Chapter 66 relates to the incorporation of grazing district associations for the

purpose of aiding in the conservation of natural forage resources and in the restoration and improvement of lands which may be acquired by lease or purchase from a political subdivision of the state or from others. Chapter 67 relates to the creation of a county land advisory board which shall, upon request, advise with the board of county commissioners in the lease, sale, exchange and disposition of all lands owned by the county, other than such as may be required for the regular conduct of county affairs, and "may cooperate with the board of county commissioners in establishing grazing districts or entering into agreements with other landowners for the establishment of grazing districts, whereby county lands may be leased either on a per head or per acre basis."

The fifth paragraph of Section 1 of Chapter 65 provides that "whenever any lands acquired by a county by tax deed have been offered for sale at public auction and not sold, the county commissioners may, if deemed for the best interest of the county, lease said lands upon the best terms obtainable, provided that such lease shall not extend over a period longer than five years, except of lands to be or within a legally created grazing district, when such lease may run for a period of not to exceed ten years." Section 3 of Chapter 66 provides that each cooperative grazing association shall have power "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." Section 6 of Chapter 66 provides that "any incorporated grazing association may purchase or lease any and all lands owned by the county not already leased, and located within the proposed district; such lease to be for a period of five years, with the land thus leased not subject to sale to other parties, but with the privilege of purchase by the Incorporated Grazing District at any time during the term of the lease at such appraised price as shall be determined at or prior to the origination of the lease; provided, however, no such lease shall be entered into until the Board of

County Commissioners, in order to conserve and protect the existing forage resources on such county land and to restore the maximum carrying capacity of such land, shall reserve the right to regulate and limit the amount of grazing thereon and the limitations and restrictions imposed shall be made a part of such lease. Annual rentals for county lands included in Incorporated Grazing Districts shall be payable annually in advance. Failure to comply with regulations prescribed in the lease relating to protection, administration, or improvement of such Grazing Districts or to make payments of annual rentals within the time prescribed shall be grounds for forfeiture and cancellation of such leases. Provided, however, that where county lands are included in Grazing Districts, which include also lands belonging to the Federal Government, then the provisions for the protection, administration, regulation, and improvement of such Grazing Districts, as shall be laid down by the Secretary of the Interior, shall be designated in each lease to apply to the county lands included therein. In negotiating the terms of any lease with a Cooperative Grazing District, the County Commissioners may provide for a variable scale of rental charges, based on market prices for livestock and/or livestock products, or on the number and character of stock to be grazed in said district."

Section 8 of Chapter 66 provides that the directors of the association shall have power, "on behalf of the association, to enter into leases with persons, corporations, partnerships or with the county or counties in which the district is located or with the State or Federal Government for tracts of land within, contiguous to or adjacent to such districts."

The statutes, being in *pari materia*, should be considered together and harmonized if possible. (*City of Butte v. Industrial Accident Board*, 52 Mont. 75; *Huber v. Thomas*, 19 Pac. (2d) 1042; *City and County of Denver v. School District*, 30 Pac. (2d) 866; 59 C. J. 1053.) But as section 1 of Chapter 65 is in irreconcilable conflict with section 6 of Chapter 66 so far as the term of a lease of county lands within or

contiguous to a cooperative grazing district is concerned, which should prevail? Paragraph 5, quoted in full above, is the only part of Section 1, or for that matter of Chapter 65, which has to do with the leasing of county lands to a cooperative grazing association. It deals with the subject only in a general way. Section 6 deals with the subject in a more minute and particular way. It is well settled that where a statute deals with a subject in general terms and another deals with it in a more minute and definite way, the special will prevail over the general statute so far as there is any repugnancy between them. (*Section 10520*, R. C. M. 1921; *In re Stevenson*, 87 Mont. 486; *Koelsch v. Girard*, 33 Pac. (2d) 816; *Key System Transit Co. v. Oakland*, 13 Pac. (2d) 979; *Davis v. State*, 1 Pac. (2d) 824; 59 C. J. 1055.) Chapter 65 passed the Senate and was transmitted to the House on February 13, 1933, and passed the House and was returned to the Senate on February 27, 1933. It was presented to the Governor on March 1, 1933. Chapter 66 passed the Senate and was transmitted to the House on February 17, 1933, and passed the House and was returned to the Senate in amended form for concurrence on February 27, 1933. On February 27, the Senate concurred in the amendment made by the House. It was presented to the Governor on March 2, 1933. Both pieces of legislation were approved by the Governor on March 7, 1933. Chapter 66, then, has the added argument in its favor that it was acted upon later in the Assembly than was Chapter 65. (*Daly v. Horsefly Irr. Dist.*, 21 Pac. (2d) 787.)

We think the necessary implication from the language of sections 1, 2, 3, 4 and 5 of Chapter 66 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* 933, sec. 500; 25 R. C. L. 978, sec. 228; 59 C. J. 972, sec. 575.)

Chapter 66 declares that three or

more persons may incorporate thereunder. It has been held more than once by the courts that statutes which provide for the formation of corporations are not to be construed as authorizing other corporations to become corporators, unless such an intention on the part of the legislature is clear, especially statutes authorizing "persons" to form corporations, wherein cannot be implied or discerned any intendment that other than natural "persons" is meant. In the case of a proposed stock corporation there is the further obstacle that an existing corporation cannot become a subscriber to its capital stock in the absence of express statutory authority or charter power. (*Denny Hotel Co. v. Schram*, 32 Pac. 1002; *American Ball Bearing Co. v. Adams*, 222 Fed. 967; 1 *Fletcher Cyclopedia Corporations*, sec. 85, p. 287.)

In view of the peculiar language of Chapter 66 it would seem that only a person of either sex may become a member of an incorporated grazing association. Section 4 thereof provides: "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."

Section 7 thereof provides: "Each association incorporated under this Act shall, within thirty days after its incorporation, adopt, by majority vote of its members, for its government and management, a code of by-laws, not inconsistent with the powers granted under this Act. Such association may also under its by-laws provide for any or all of the following: \* \* \*

"2. The number of members constituting a quorum. In voting at meetings, no proxies shall be allowed."

It will be noted that a person who desires to become a member of any such association must first pay the membership fee and subscribe to the by-laws thereof. It will be noted further that a member may sell a part of his land to another individual, thereby placing the latter in a position to acquire membership in the association. It will be noted also that the by-laws may provide for the number of members which shall constitute a quorum at a meeting of the association. Moreover, it is not without significance that the words "corporations" and "partnerships" occur only in section 8 of the Act and then only in connection with the leasing by such entities to the association of lands owned by them within, contiguous to, or adjacent to a grazing district.

Section 12 of Chapter 66 is of doubtful validity in so far as it differentiates between persons who own land and livestock of an assessed value of at least \$2,500 and persons who own land and livestock of an assessed value of \$2,499 or under. If a monopoly may be injurious to a person who owns land and livestock of an assessed value of say \$5,000, it may be doubly injurious to a person who owns land and livestock of an assessed value of say only \$1,000. The latter would go down much quicker perhaps than the former. It is said that a statute makes an improper and unlawful discrimination if it confers particular privileges upon a class arbitrarily selected from a larger number of persons, all of whom stand in the same relation to the privileges granted, and between whom and the persons not so favored no reasonable dis-

inction or substantial difference can be found justifying the inclusion of the one and the exclusion of the other. (Franchise Motor Freight Ass'n v. Seavey, 235 Pac. 1000; Selby v. Oakdale Irr. Dist., 35 P. (2d) 125.)

We do not see how section 7 of Chapter 67 can be made effective except in conjunction with the provisions of Chapter 66.