

lation to the Montana Grazing Commission. With your request for an opinion you enclosed a memorandum in relation to the law, an outline of procedure by the Montana Grazing Commission, and rules and regulations of associations operating under by-laws approved by the Montana Grazing Commission, and, also, a protest and objections in the matter of Wayne Creek Cooperative Association.

Your first question is as follows:

"1. Is the outline of the procedure or approval as adopted by the Montana Grazing Commission legal?"

From an examination of the papers covering this procedure, we do not discover anything illegal in such outline.

"2. Is it necessary for a Grazing Association, incorporated under the Grazing Act of the State of Montana, Laws of 1935, to receive the approval of the Grazing Commission before the Grazing Association is deemed legally organized?"

From an examination of the law, it appears that a grazing association may organize in accordance with Section 1 of Chapter 195, Laws of 1935, in a manner very similar to other corporations. In the final organization steps, set forth in this section, from Subdivision 5 of Section 2 of the same act, it appears that the grazing association must comply with the regulations of the Montana Grazing Commission. By Section 4 of the Act, the adoption of by-laws is required, and such by-laws must be approved by the Montana Grazing Commission. We do not find anywhere in the law a provision that the approval of the Grazing Commission is necessary before a grazing association is legally organized.

"3. Where an association is organized under the provisions of Chapter 66, Laws of 1933, is it necessary for said association to conform to the 'terms and conditions of Chapter 195, Laws of 1935', and to what extent does Section 13 of said Chapter 195, as a saving clause, exempt such an association from complying with the terms and conditions of Chapter 195?"

In Section 4 it is provided that each

**Opinion No. 267.**

**Grazing Associations—Montana Grazing Commission.**

HELD: Laws relating to organization of grazing associations, and powers of Montana Grazing Commission, with relation thereto, are construed.

April 14, 1936.

Mr. Nic W. Monte  
Administrator, Montana Grazing  
Commission  
Miles City, Montana

You have submitted to the Attorney General a number of questions in re-

association incorporated under the provisions of Chapter 66 of the Session Laws of the 23rd Legislative Assembly of the State of Montana, 1933, shall within thirty days after the passage and approval of this Act, by a majority vote of its members, amend its existing by-laws, and that such amended by-laws shall be submitted to and approved by the Montana Grazing Commission. This Section requires that associations organized under the law before its amendment in 1935 must have their by-laws approved by the Grazing Commission as well as associations organized under the present statute. I find nothing in the saving clause, Section 13 of the present statute, which nullifies this requirement.

"4. Where a Grazing Association, organized under the provisions of Chapter 66, Laws of 1933, files a protest before the State Grazing Commission, does the filing of such protest have the legal effect of bringing such association under the provisions of Chapter 195, Laws of 1935?"

In answer to this question would reply that it appears to be the theory of the law that all associations, whether incorporated under the law before or after its amendment, are subject to the provisions of the present law. From the saving clause in Section 13 it appears that associations organized prior to the enactment of the amended statute continue to exist as prior to such amendment. They are, however, subject to the authority of the Grazing Commission as set forth in such amended statute to the same extent as new associations organized under the statute since its amendment.

"5. Is a local Grazing Association, incorporated under the provisions of Chapter 66, Laws of 1933, by reason of its failure to comply with the provisions of Section 4 of Chapter 195, Laws of 1935, in not submitting its by-laws within 30 days for the approval of the Montana Grazing Commission, deemed to be a legal association? Is it necessary for such an association to have its by-laws approved by the Montana Grazing Commission?"

An association organized prior to

1935 is thereafter required to adopt by-laws which must be approved by the State Grazing Commission. If such association fails to take such action and secure such approval, the statute does not, expressly or impliedly, determine that such failure *ipso facto* terminates the existence of the association or authorizes the commission to terminate such associations. The right to issue grazing permits in accord with rules of the board is found only in the amended statute, Section 2 (5). The remedy or punitive action to be taken by the commission, or to be suffered by the association is not set forth in the law. Thus, we have an association which has violated the law, and the remedy is not stated for such violation.

"6. Has the Montana Grazing Commission jurisdiction to require reorganization of grazing districts of grazing associations incorporated under Chapter 66, Laws of 1933, where the Commission finds such districts are too small in area or have overlapping boundaries, which districts should, in the judgment of the Montana Grazing Commission, be merged into districts with larger area?"

It does not appear reasonable that two associations may exercise powers and authority of associations under the law in respect to the same area. The law does not provide that the association first organized is the association that must be recognized by the Commission, especially where such association fails to comply with the law or regulations of the Commission. As to whether or not the second association may be recognized by the Grazing Commission, and may have the powers which are granted to associations acting in conjunction with the Commission under the present law, we are presented with a very difficult question. Section 11 of the law provides for appeals to the Montana Grazing Commission—apparently recognizing discretionary and judicial power in the Commission. Section 12 authorizes an appeal to the court from any decision of the Grazing Commission. Thus, we are confronted with a question of determining what is the authority of the Montana Grazing Commission, which authority is not clearly fixed in the law.

If the Attorney General of this State should attempt to determine the extent of the authority of the Commission, or of the court upon appeal, such a decision would have no binding authority. No machinery is provided for the enforcement of the determination of such an opinion. It would seem that it is strictly proper for the Commission to exercise such powers and authorities as the Commission deems are authorized by this section 11 in relation to appeals, and that if either party is dissatisfied with the decision of the Commission that an appeal be taken to the court, and that the court determine the extent of the authority of such Commission. Such a judgment would thus be rendered by a court whose decree may be enforced under the laws of this State.