

Opinion No. 4.

Corporations — Co-Operative Associations—By-Laws, Limitation on—Reserve Fund.

HELD: The reserve fund of a co-operative association, organized under the provisions of Sections 6375-6396, R. C. M. 1935, may not exceed an amount equal to 30% of the paid up capital stock of the association; nor may the by-laws make provision for a larger reserve fund.

December 8, 1936.

Hon. Sam W. Mitchell
Secretary of State
Helena, Montana

Dear Mr. Mitchell:

You have presented the following matter and have requested my opinion

thereon. The Farmers Union Oil Company of Nashua, Montana, is a cooperative association created under the provisions of Sections 6375-6396, R. C. M. 1935. The association has presented proposed amended by-laws to your office for filing. Paragraph 2 of Section 27 of Article VI of said proposed amended by-laws provides, in part: "A reserve fund of at least ten per cent (10%) of the net income shall be set aside until an amount has accumulated in said reserve fund amounting to fifty per cent (50%) of the paid up capital stock. * * *" You inquire whether the quoted portion of the proposed amended by-laws complies with Section 6387, R. C. M. 1935, which provides:

"The directors of a co-operative association, subject to revision by the stockholders at a general or special meeting may apportion the earnings of the association by first paying dividends on the paid up capital stock, not exceeding six per cent (6%) per annum on the par value thereof, from the remaining funds, if any, accessible for dividend purposes, not less than five per cent (5%) of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to thirty per cent (30%) of the paid up capital stock, and from the balance, if any, five per cent (5%) for educational fund to be used for teaching co-operation, and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production association such as creameries, canneries, elevators, factories and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons."

The rule, so elementary as to require no citation of authorities, is that a corporation being a creature of statute has only those powers granted by statute and those powers necessarily

implied from the powers expressly granted. Co-operative associations, formed under the provisions of Sections 6375-6396, R. C. M. 1935, are corporations. (Section 6375, R. C. M. 1935; *Anderson v. Equity Co-operative Assn.*, 67 Mont. 291, 293.)

In simplified outline form the above-quoted section provides that the directors of a co-operative association may (subject to revision by the stockholders in meeting):

1. pay dividends not exceeding 6% per annum on the par value of paid up capital stock;
2. Set aside, out of the balance of net profit remaining after payment of dividends, not less than 5% of net profits for a reserve fund until the reserve fund equals 30% of the paid up capital stock;
3. Set aside out of the balance then remaining 5% of the net profit for an educational fund to be used for teaching co-operation; and
4. Distribute the remainder of the net profits to patrons and employees in the manner provided.

The statute expressly grants co-operative associations power to establish a reserve fund but it expressly limits the amount which may be deposited in said fund by granting the power to build up such a fund "until an amount has accumulated in said reserve fund amounting to thirty per cent. (30%) of the paid up capital stock." There is nowhere an implied power to exceed that limitation. By-laws of a corporation which are contrary to or inconsistent with governing statute are ultra vires and void. (14 C. J. 362, par. 460; 14 C. J. 364, par. 463.)

It is therefore my opinion that the reserve fund of a co-operative association, organized under the provisions of Sections 6375-6396, R. C. M. 1935, may not exceed an amount equal to 30% of the paid up capital stock of the association; nor may the by-laws make provision for a larger reserve fund.