

Opinion No. 2

**Corporations—Co-operatives— Articles
of Incorporations—By-Laws
Contents of.**

HELD: By-laws of co-operative associations must make provision for the election of the directors and officers by vote of the stockholders.

December 2, 1938.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

Dear Mr. Mitchell:

Your letter of November 30 requests an interpretation of Section 6380 R. C. M. 1935. The section reads as follows:

“The officers of the association shall consist of a board of directors, who shall exercise the corporate powers invested in such association, the number of which, not less than three, shall be fixed by the by-laws of the association; a president, vice-president, secretary, and treasurer, to be elected by the stockholders as provided by the by-laws. All by-laws shall be adopted by the stockholders of the association.”

It seems to be quite the general practice, and, I might say, the law, as a general rule, that in the absence of provisions to the contrary the power to elect directors and other officers is in the stockholders, provided the corporation is a stock corporation, with authority to issue stock. This power

has often been conferred upon the directors so far as other officers are concerned. Generally, the stockholders elect the directors and the directors in turn elect or appoint other officers. It is not uncommon, however, that there is a statutory provision that the directors and other officers are elected by the stockholders, and when such a provision does exist in the statutes, as in this instance, the construction seems to be that the election or appointment of officers by the directors is in contravention to the statute and therefore not within the authority of the board of directors.

In the case of *State ex rel. Badger Telephone Company v. Rosenow*, 174 Wis. 9, 182 N. W. 324, the charter of the corporation provided that officers of the company shall be elected by a majority vote of the stockholders, etc. The secretary-treasurer was so elected but the incumbent refused to surrender office, contending that the charter was in conflict with the statutes of the state. It was held by the Supreme Court of the State of Wisconsin that when the provisions of the charter or articles of incorporation are in conflict with the statute, the statute governs.

In the case of *Wallace v. Wells* (Tex.), 228 S. W. 1111, it was held that it could not be assumed that the charter of a church, in granting to the board of trustees power to make by-laws, gave the trustees authority to enact by-laws in contravention of the statutes relating to corporations.

In the case of *Bechtold v. Stillwagon*, 195 N. Y. S. 66, the by-laws provided for the election of the treasurer and other officers by a vote of the stockholders but the statute says that the directors of a stock corporation may appoint a treasurer and other officers. It was held that while every corporation is given power to make by-laws they must not be inconsistent with any existing laws.

We take it to be the general principle and to be the law that if the statutes make provision as does our statute (Section 6380), that the directors and officers be elected by the stockholders as provided by the by-laws; that such by-laws should make provision accordingly and cannot contravene the statute by setting out that the officers shall be elected by the directors.