

The word "adopt" means "to take or receive as one's own (esp. what is not so naturally); to select and take or approve; as to adopt the view or policy of another; these resolutions were adopted." (Webster's New International Dictionary, 2d Ed. 1938). In *Schreyer v. Turner Flouring Mills* (Ore.) 43 Pac. 719, 720, the Court used similar language; "adopt means to take and receive as one's own that with reference to which there existed no prior relation, either colorable or otherwise." Thus we say a person "adopts" a child when he takes and receives a stranger to his blood into his own family and formally accepts it as his own; or a person adopts a contract when not having been previously bound by the terms thereof he makes it his own. Synonyms for the word "adopt" bear out this definition; adopt is used as accept or ratify.

The word "amend" means "to alter (as a will or resolution) formally by some addition, taking away or modification" (Webster's New International Dictionary, 2nd Ed. 1938). An "amendment" presupposes a change in something existing (*Cooke v. Myers*, 86 Mont. 423, 425.) It is synonymous with correct, reform or rectify and means a change or modification for the better. (*State v. City Commission of St. Angelo* (Tex.), 101 S. W. 2, 360, 361). "There must be something to amend." (*Sharman v. Huot*, 20 Mont. 555, 559; *Durland v. Prickett*, 98 Mont. 399, 411.)

When by-laws are "adopted" they are accepted and received by the cooperative association upon its first organization. No by-laws were ever in existence, and in adopting by-laws the directors or stockholders make them their own. When by-laws are "amended" it means that by-laws that have previously been adopted are altered, changed, or rectified. Adoption refers to the incorporation procedure, amendment to the changes needed as a result of experience, changing conditions or growth.

This is the position taken by the legislature with respect to corporations. By-laws must be "adopted" within one month after the articles of incorporation are filed (Section 5930, R. C. M., 1935). But Section 5932, R. C. M., 1935, provides for the "amendment" of "all by-laws adopted."

Opinion No. 223.

Cooperative Associations—Corporations—By-Laws, Amendment of.

HELD: The stockholders of a cooperative association may delegate to its Board of Directors the power to alter or amend its by-laws.

April 10, 1940.

Honorable Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

Dear Sir:

You have asked if a cooperative association may delegate the power to amend its by-laws to its board of directors.

Section 6380, R. C. M., 1935, defines the officers of a cooperative association and further provides: "All by-laws shall be adopted by the stockholders of the association."

It is my opinion that Section 6380, in referring to the adoption of by-laws, means only that at the first organization of the company by-laws must be adopted by the stockholders.

The law relating to cooperative associations (Chapter 38, Vol. 3, Political Code, R. C. M., 1935) does not contain any provision for amendment of the by-laws of such an association. Therefore, in order to determine the method of amendment it is necessary to refer back to the general corporation law. (Section 6012, R. C. M., 1935; Article XV, Section 18, Constitution of Montana). The section of the general corporation law governing the amendment of by-laws is Section 5932, *supra*.

This section provides that by-laws may be amended or repealed or new by-laws adopted at any annual meeting of the stockholders or members by a vote of two-thirds of the subscribed stock or members respectively.

"The power to repeal and amend the by-laws, and adopt new by-laws, may by a similar vote at any such meeting or similar written assent, be delegated to the board of directors. The power when delegated, may be revoked, by a similar vote, at any regular meeting of the stockholders or members."

By virtue of this section I am of the opinion that the members of a cooperative association may delegate to the board of directors the power to alter or amend the by-laws of their association.