

## No. 85

**GRAZING ASSOCIATIONS, Incorporation of—MONTANA  
GRASS CONSERVATION COMMISSION**

**Held:** Under Chapter 208, Laws of 1939, Grazing Associations, operating under former laws, need only to amend properly their articles of incorporation and by-laws within the six months from the passage of the Act; and the filing thereof, together with the certificate of approval, with the Secretary of State and County Clerk need not be done within such period.

April 18, 1941.

Mr. H. M. Montgomery  
Acting Secretary  
Montana Grass Conservation Commission  
Box 316  
Chinook, Montana

Dear Mr. Montgomery:

On behalf of the Montana Grass Conservation Commission you have submitted, in substance, the following facts:

After Chapter 208 of the Laws of 1939 became effective on March 17, 1939, Cooperative Grazing Associations, organized under former state laws, amended their articles of incorporation and by-laws by adoption at meetings within six months after March 17, 1939. All of such amended articles and by-laws were approved by your commission and certificates of approval ordered attached to the instruments prior to the expiration of the six-month period. Due to the amount of clerical work necessary, the amended articles, amended by-laws and certificates of approval were not filed with the Secretary of State in some instances for weeks or months after the six-month period expired. You have submitted a transcript showing the form of proceedings taken by such Grazing Association to conform to the 1939 Act.

Your question is:

Was it necessary to file the amended articles of incorporation, the amended by-laws and the certificates of approval within six months after the effective date of the Act?

An examination of the form of the instruments involved in the proceedings reveals that compliance in form with the requirements of Chapter 208, Laws of 1939, was accomplished.

Section 18 of Chapter 208 prescribes a method and procedure to be followed by Grazing Associations previously formed, desiring to operate under the 1939 Act. Section 18 provides:

"Section 18. All grazing associations incorporated under Chapter 66, Laws of 1933, of Chapter 195, Laws of 1935, shall within six months amend their articles of incorporation and their by-laws to conform with the provisions of this Act. Any district organized hereunder or any district or grazing association organized under prior laws as described in this Section may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission; the only notice of such meeting which is necessary is the notice of meetings of members as required by the by-laws of such district or association. Such amended articles of incorporation and by-laws shall be submitted to the commission for approval. Upon approval, the commission shall issue its certificate of approval. Such amended articles of incorporation shall be filed by the Secretary of State without charge, but shall not be filed unless accompanied by such cer-

tificate of approval. Upon the filing of such amended articles with the Secretary of State and the proper county clerk or clerks, such association or district shall possess the same powers and shall be subject to the same obligations as if incorporated under this Act. Any association refusing to comply with the provisions of this Section or failing to so comply within the time provided in this Section may be dissolved by an order of the Commission."

The language of Section 18 is plain, unambiguous, direct and certain, and speaks for itself without the necessity of resort to interpretation. Grazing Associations, previously incorporated, "shall within six months amend their articles of incorporation and their by-laws to conform with the provisions of this Act." There is no requirement that they shall "amend and file." It is true that, by express wording of the statute, such association cannot exercise the powers or be subject to obligations provided for those incorporating thereunder until such instruments have been filed. Such is the general statutory requirement in the case of ordinary corporations. (*Merges v. Altenbrand*, 45 Mont. 355, 123 Pac. 21.)

Here it appears the Grazing Associations held their meetings and thereat voted upon and passed the proposed amendments. They would be powerless to compel the Grazing Commission to approve their amendments within any certain period of time. To adopt the position that the filing must also be made within the six-month period would operate inequitably in many cases. For instance, any delay occasioned by the pressure of work, or otherwise, on the part of the Commission—in the issuance of a certificate of approval—might eliminate a Grazing Association from securing the benefits of the Act without fault on its part. The Legislature, however, eliminated any such speculation or conjecture by the plain language hereinbefore pointed out.

It follows, therefore, that it was only necessary that such Grazing Associations properly might amend their articles of incorporation and by-laws and the filing thereof was not necessary within the six-month period.

Sincerely yours,

JOHN W. BONNER  
Attorney General