

Opinion No. 101

**Cooperatives — Foreign Corporations
—Corporate Firm Name.**

Held: A foreign corporation cannot qualify and do business in the State of Montana as a foreign corporation, using the term cooperative as a part of its corporate firm name. To do business as a cooperative in the State of Montana said corporation must incorporate under the provisions of the Revised Codes of Montana, 1935.

January 29, 1948.

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

Dear Mr. Mitchell:

You have presented the following:
"The Pacific Supply Cooperative, organized under the laws of the State of Oregon, desires to enter Montana and qualify as a foreign

corporation by establishing warehouses and other facilities in this State. Its local farm cooperative units will be organized under Montana laws relating to farmer co-operatives, and it will act only and sell its supplies by and through such local co-operative agencies. Pacific Supply Cooperative has no net income of its own; all net margins being allocated and credited annually to the member units on the basis of their respective patronage."

Under the above-stated facts you seek an official opinion whether the Pacific Supply Cooperative may be permitted to qualify and do business in the State of Montana as a foreign corporation.

Attorneys for said Pacific Supply Cooperative present the view that, "in legal contemplation, it would seem that the spirit of Section 6394, Revised Codes of Montana, 1935, will be observed through admission of Pacific Supply Cooperative to do business in this State, as the business is actually that of the member units, and Pacific being a non-profit agency is merely the conduit or agency through which all of its business is transacted."

They have referred you to the provisions of Section 3920, Remington Revised Codes, somewhat similar to the provisions of our Section 6394, supra, which reads as follows:

"No corporation or association organized or doing business for profit in this state shall be entitled to use the term 'cooperative' as a part of its corporate or other business name or title, unless it has complied with the provisions of this act; and any corporation or association violating the provisions of this Section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder."

Cooperative Associations in Montana are governed by the provisions of Chapter 38, Volume 3, Revised Codes of Montana, 1935. As to the particular question involved, it would appear that Section 6394, supra, is directly in point and definitely settles the issue. Said Section provides:

"No association, person, firm, corporation, or co-partnership hereafter organized or doing business in this state shall be entitled to use the term 'co-operative', 'co-operation', 'co-operator' as a part of his, their, or its corporate firm, association, or other business name or title, unless incorporated under and in compliance with the provisions of this chapter; nor shall any corporation, incorporated under the co-operative laws use the term 'farmers' when less than one-half of its stockholders or members are farmers by occupation."

The Washington Statute, Section 3920, supra, uses the words, "No corporation or association **organized or doing business for profit** in this state shall be entitled to use the term 'co-operative' as a part of its corporate or business name or title, unless it has complied with the provisions of this act; . . ." while our statute, Section 6394, supra, provides that, "**NO** association, person, firm, corporation or copartnership hereafter organized or doing business in this state shall be entitled to use the term 'cooperative', 'co-operation', 'co-operator,' as a part of his, their or its corporate firm . . . name . . . unless incorporated under and in compliance with the provisions of this chapter; . . ." (Chapter 38, Vol. 3, Revised Codes of Montana, 1935).

Thus it can be seen that the question of profit or non-profit does not enter into the question here involved, insofar as the provisions of said Section 6394, supra, are concerned.

In construing Section 6394, supra, the legislative intention controls, and such intention is determined from the language employed. (McNair v. School District, 87 Mont. 423, 288 Pac. 188.)

The language used in said Section 6394 is plain, simple, direct and unambiguous, therefore it would appear that it does not require construction. (Great Northern Utilities v. Public Service Comm., 88 Mont. 180, 293 Pac. 294.)

Courts will not read into statutes words necessary to make it conform to supposed intention of the legisla-

ture. (Mills v. State Board of Equalization, 97 Mont. 13, 33 Pac. (2d) 563.)

Nor will the Courts insert what has been omitted or omit what has been inserted. (State v. Certain Intoxicating Liquor, 71 Mont. 79, 227 Pac. 472; 19 Attorney General's Opinions, 390, 392, Opinion No. 240; See also: Section 10519, Revised Codes of Montana, 1935.)

It is, therefore, my opinion that the Pacific Supply Cooperative cannot qualify and do business in the State of Montana as a foreign corporation, using the term 'corporative' as a part of its corporate firm name. To do business as a cooperative in the State of Montana said corporation must incorporate under the provisions of the Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General