

VOLUME 31

Opinion No. 5

**COOPERATIVE ASSOCIATIONS; Milk Control Act—STATE MILK
CONTROL BOARD; Powers; Regulation of Cooperatives.**

**HELD: The Montana Milk Control Act and lawful orders issued there-
under apply to cooperatives.**

July 23, 1965

Mr. Geoffrey L. Brazier
Executive Secretary
Montana Milk Control Board
Steamboat Block
Helena, Montana

Dear Mr. Brazier:

By letter dated June 9, 1965, you request an Attorney General's opinion on the following question:

"Do the Montana Milk Control Act and lawful official orders issued in the exercise of authority delegated thereby supercede articles of incorporation and by-laws of cooperative marketing associations organized under the Cooperative Marketing Act of the State of Montana?"

In my opinion, the Milk Control Act and official orders lawfully enacted in the exercise of authority delegated thereby do supersede articles of incorporation and by-laws of associations incorporated under the Cooperative Marketing Act, where the same are in conflict.

The result is the same whether reference is made to laws pertaining to administrative milk control or to laws pertaining to cooperative marketing associations.

Under the provisions of R.C.M. 1947, 27-403, the word "person" is defined to mean any person, firm, corporation or association; the word "association" is defined to mean any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the Board; the word "dealer" is defined to mean any producer, distributor or producer-distributor; the word "producer" means any person who produces milk for fluid consumption within the state, selling the same at wholesale to a distributor; and the word "distributor" means any person purchasing milk and distributing the same for fluid consumption within the state.

Under the provisions of R.C.M. 1947, 14-402, the term "association" is defined to mean any corporation organized under the provisions of the Cooperative Marketing Act. By the provisions of statutes, the Milk Control Act and the Cooperative Marketing Act both deal with fluid milk aspects of the dairy industry.

The Supreme Courts of both the State of California and the State of Oregon have ruled that similar statutes expressly bring cooperative associations under the purview of the milk control or stabilization administration of the respective states. **State ex rel. Van Winkle v. Farmers Union Co-op Creamery**, 160 Ore. 205, 84 Pac. (2d) 471. **U. S. Milk Producers v. Cecil**, 47 C.A. (2d) 758, 118 Pac. (2d) 830.

The issue whether the constitutional protections of property and the right to contract supersede milk control was litigated in the case of **Nebbia v. New York**, 291 U.S. 502, 54 Sup. Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469. The U. S. Supreme Court held that the Milk Control Act of the state of New York was constitutional as a reasonable exercise of the police power, superseding, among other things, the private right of milk distributors to contract, where the contracts came in conflict with matters touched upon by milk control.

Relying mainly upon that decision, and recognizing that the great majority of sister states which do administer their respective fluid milk industries by means of administrative milk control also are in accord with the analysis of the U. S. Supreme Court, the Montana Supreme Court came to the identical conclusion in **Milk Control Board v. Rehberg**, 141 Mont. 149, 376 Pac. (2d) 508, regarding the problem under the Montana constitution and statutes.

Under the general laws relating to corporations and associations, it is axiomatic that a corporation's powers and duties are defined not only by its articles and by-laws, but general laws relating to corporations and the laws and the police regulations of the state wherein

the corporation or association is granted a franchise to act. Apparently this proposition is so well accepted generally, that the Montana Supreme Court has not had occasion to elaborate upon it.

An appropriate, applicable statement on the subject is found at 19, C.J.S., Corporations, Section 948(k), page 383, wherein the author comments:

“. . . Furthermore, since corporations are subject to the restraints of the general laws and the police regulations, whether existing at the time of incorporation or afterward enacted, although not expressly mentioned, whenever they are within the reason of them, such laws are not to be read into their charters, and they cannot conduct their business in disregard of them any more than an individual may unless expressly and constitutionally exempted from their operation. Although the legislature may exempt them from the operation of such laws, subject to constitutional restrictions, an intention to do so is not to be implied unless such intent is clear. . . .

“Unless expressly exempted, corporations are subject to the same control as individuals under the police power of the state, whether exercised directly through its legislature, or by delegation through the legislative body of a municipal corporation.”

And as observed in 16 Am. Jur. (2d), Cooperative Associations, Section 7, p. 267:

“Since a cooperative association organized in corporate form is basically a corporation, the general laws relating to corporations apply.”

As observed above, not only is there no express exception granted to the cooperatives from the operation of the Milk Control Act, but the Cooperative Marketing Act touches upon the same subject as the Milk Control Act in many respects. Therefore, a cooperative, the same as any other person or corporation, is subject to the provisions of the Milk Control Act on matters relating to the fluid milk industry of the state of Montana, under the control of the Milk Control Board.

Very truly yours,
FORREST H. ANDERSON
Attorney General

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