

OPINION
65-56

July 30, 1965 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Cooperative Associations - Increase in Capital Stock

This is in reply to your letter of July 23, 1965 relative to Section 138 of the North Dakota Constitution. You ask whether Section 138 of the North Dakota Constitution applies to cooperative associations.

Section 138 of the North Dakota Constitution provides:

"No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained."

This provision is found in Article VII of the North Dakota Constitution. Section 144 of the Constitution, also found in Article VII thereof, provides:

"The term 'corporation', as used in this article, shall not be understood as embracing municipalities or political divisions of the state unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships."

It is commonly understood that cooperative associations possess many of the powers and privileges of an ordinary corporation. This question undoubtedly arises because of the provisions of section 10-15-37 of the North Dakota Century Code, which provides:

AMENDMENTS TO ARTICLES. At any member meeting a cooperative may adopt any amendment to its articles which is lawful under section 10-15-05, if a statement of the nature of the amendment was contained in the notice of the meeting.

An amendment is adopted when approved by members holding a majority of the member votes cast thereon."

Section 10-15-05 of the North Dakota Century Code provides in part:

ARTICLES - PROVISIONS. The articles of association shall set forth:

* * *

4. Whether the cooperative is organized with or without capital stock;
5. The designation of classes of members, if more than one;
6. The number and par value of shares of each authorized class of stock; if more than one class is authorized, the designation, preferences, limitations, and relative rights of each class shall also be set forth;

* * *."

Prior to 1957, section 10-1513 of the North Dakota Revised Code of 1943 provided in part:

"An association may increase its capital stock at a meeting called for that purpose by the directors as follows:

* * *

2. A majority of the stockholders and the persons holding the larger amount in value of the stock must be represented by the vote in favor of the increase;

* * *."

Thus prior to the enactment of chapter 194 of the 1957 Session Laws the provision relative to the increase of capital stock of a cooperative was in accordance with section 138 of the North Dakota Constitution. This provision was not included in the North Dakota Cooperative Association Act of 1957. We do not believe, however, that the legislature by the enactment of section 10-15-37 of the North Dakota Century Code intended to imply the capital stock of a cooperative association could be increased by a majority of the members voting on the amendment. It is our belief that this section applies only to those amendments which do not constitutionally require a certain vote for their passage and that the legislature presumed section 138 of the North Dakota Constitution was controlling and further legislation was not necessary. In construing a statute, courts will if possible, avoid holding the statute invalid, and such construction will not be adopted when the law is susceptible of another construction which is reasonably in harmony with the apparent object sought to be accomplished by the legislature. *Wallentinson v. Williams County*, 101 N.W.2d. 571. (N.D. 1960).

It is our opinion that section 138 of the North Dakota Constitution applies to cooperative associations as well as corporations in view of section 144 of the Constitution.

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