

OPINION
65-64

November 29, 1965 (OPINION)

The Honorable Ben Meier

Secretary of State

RE: Cooperatives - Use of Term Incorporated

This is in reply to your letter of November 22, 1965, in which you ask the following question:

"May a cooperative association, organized under the provisions of chapter 10-15, North Dakota Century Code, use the word 'incorporated' or 'corporation' as a part of its name?

"For instance, would the name 'Main Street Improvement Company, Incorporated' be an acceptable name for a cooperative association?"

We note that section 10-15-01 of the North Dakota Century Code provides in part:

"As used in this chapter, unless the context requires otherwise, the term:

1. 'Cooperative' means an association incorporated under this chapter.

* * *

3. 'Association' includes both cooperatives and foreign cooperatives.

4. 'Corporation' means all corporations not associations.

* * *."

Section 10-19-02 of the North Dakota Century Code provides in part:

"As used in chapters 10-19 through 10-23, unless the context otherwise requires, the term:

1. 'Corporation' or 'domestic corporation' means a corporation for profit subject to the provisions of chapters 10-19 through 10-23, except a foreign corporation, unless from the context of any statute, a different intention plainly appears;

* * *."

It will be noted that the statutes dealing with cooperatives and the statutes dealing with corporations have prescribed a definite meaning to each of these terms. Chapter 10-15 of the North Dakota Century Code, concerning cooperative associations, does use the terms

"incorporated" or "incorporators" in certain statutes. See, e.g., section 10-15-39. We may therefore conclude that a cooperative is incorporated but it is incorporated under different statutes than those governing regular corporations.

Section 10-19-07(1) of the North Dakota Century Code requires that a corporation incorporated under the provisions of chapter 10-19 should contain the word "corporation," "company," "incorporated" or "limited," or should contain an abbreviation of one of such words. No similar requirement is made with regard to cooperatives.

There is no doubt that the statutes create a distinction between the cooperative association and the regular corporation although they may both be said to be "incorporated" under the laws of this state. The distinction between the two forms of business organization is not merely in the organization thereof. Since the statutes do make such a difference, it would appear to create confusion to permit both the cooperative and the corporation to use a term which has significance only for the one business organization, i.e., the corporation.

In view of the fact section 10-15-01 of the North Dakota Century Code distinguishes between cooperative associations and corporations and in view of the fact cooperative associations are organized under chapter 10-15, it is our opinion a cooperative association should not use the words "incorporated" or "corporation" as a part of its name.

HELGI JOHANNESON

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