

**OPINION  
66-60**

February 16, 1966 (OPINION)

The Honorable Charles Tighe

Lieutenant Governor

RE: Cooperatives - Grazing Association - Corporate Farming

This is in response to your letter in which you ask for an opinion on the following questions:

1. Is a cooperative grazing association organized pursuant to chapter 36-08 of the North Dakota Century Code and which has seventy-five percent of its members or stockholders as actual farmers residing on farms or depending principally on farming for their livelihood, exempt from the provisions of chapter 10-06 of the North Dakota Century Code?
2. Is a cooperative grazing association organized pursuant to chapter 36-08 of the North Dakota Century Code and which has seventy-five percent of its members or stockholders as actual farmers residing on farms or depending principally on farming for their livelihood, and which also is organized and operated under the general law governing cooperatives as it may be under section 36-08-02 of the North Dakota Century Code, exempt from the provisions of chapter 10-06 of the North Dakota Century Code?

To answer the questions submitted, it is necessary to examine section 10-06-04 of the North Dakota Century Code, which provides as follows:

COOPERATIVE CORPORATIONS EXEMPTED, WHEN. Nothing in this chapter shall be construed to prohibit cooperative corporations, seventy-five percent of whose members or stockholders are actual farmers residing on farms depending principally on farming for their livelihood, from acquiring real estate and engaging in cooperative farming or agriculture.

This section, while it uses the term "cooperative corporations," applies equally well to "cooperative associations." In fact, the term "association" is more descriptive of a cooperative than of a "corporation." For that matter, our present statutes treat cooperatives as associations. We conclude that the term "cooperative corporations" in reality is referring to "associations" and as such includes the term "association."

A cooperative grazing association can be organized under the provisions of chapter 36-08. The provisions of chapter 36-08 set out the manner in which a grazing association may be formed and generally who may organize and be a member of such association. It is noted, however, that section 36-08-02 provides that a "nonprofit cooperative association may be organized and operated under the general law governing cooperatives."

It is further observed that in section 36-08-06 the articles of association for grazing associations are subject to the general law governing cooperatives. In addition to this, section 36-08-08 provides that the directors of a grazing association are subject to the general law governing directors of cooperatives. This section then sets forth the specific powers of the directors of a grazing association.

The laws governing cooperative associations are found in chapter 10-15 of the North Dakota Century Code. Basically this chapter authorizes cooperatives to be created for any lawful purpose except for banking, insurance, and building and operating public railroads. Section 10-15-02 provides as follows:

PURPOSES. Cooperatives may be organized under this chapter for any lawful purpose except banking, insurance, and building or operating public railroads, but subject to statutes relating to the organization or operation of specified kinds of corporations or associations."

It should be noted that the above quoted section provides that the cooperatives shall be subject to the statutes relating to the organization or operation of specified kinds of corporations or associations.

Section 10-15-60 of the North Dakota Century Code provides as follows:

APPLICATION OF CHAPTER. All foreign and domestic cooperatives are governed by the provisions of this chapter except that they shall not apply to cooperatives governed by Title 26 or by chapters 6-06, 10-12, 10-13, 36-08, or 49-21 of this code, except where the laws governing such associations clearly adopt or refer to any provisions of this chapter or refer to provisions of the general law governing cooperatives."

This section appears to exempt grazing associations formed under chapter 36-08 from the provisions of chapter 10-15, but it specifically provides that if the laws pertaining to a special association or cooperative adopt or refer to the provisions of chapter 10-15, the provisions of chapter 10-15 shall apply. Because of this provision it is necessary to review again the provisions of section 36-08-02, section 36-08-06 and section 36-08-08.

The provisions as presently found in the Century Code were originally enacted in 1935 and amended by chapter 105 of the 1957 Session Laws. The cooperative grazing association act as originally adopted and as appearing in the 1943 Code did not make any specific reference to the laws pertaining to cooperatives generally but seemed to provide a special and separate act to cover the organization and operation of cooperative grazing associations. However, the amendments to the cooperative grazing association act adopted by chapter 105 of the 1957 Session Laws, in addition to other things, make specific reference to the laws governing cooperatives generally, as noted in the sections mentioned supra. It is specifically noted that section 5 of chapter 105 of the 1957 Session Laws provided that the amendments would not be applicable until July 1, 1959, unless the

cooperative adopted said provisions earlier. This clearly indicates that the legislature intended that cooperative grazing associations shall be governed by the provisions of chapter 10-15 relating to cooperatives generally, as provided for in section 36-08-02, section 36-08-06 and section 36-08-08 of the North Dakota Century Code.

It is also clear from reviewing the history of the grazing association act, together with the revision of the cooperative act, that the legislature intended the grazing association to be governed by the general provisions of law relating to cooperatives under chapter 10-15, except in such instances where the provisions of chapter 36-08 are in conflict with chapter 10-15. Where such a conflict exists, under the rules of construction, the specific provision of chapter 36-08 would prevail over the general provisions of chapter 10-15.

Thus, in response to your first question, it is our opinion that the cooperative grazing association which was organized pursuant to the provisions of chapter 36-08 of the North Dakota Century Code and which has seventy-five per cent of its members or stockholders who are actual farmers residing on farms or are depending principally on farming for their livelihood comes within the exemption of section 10-06-04 of the North Dakota Century Code and would be exempt from the provisions of chapter 10-06 of the North Dakota Century Code.

In response to your second question it is our opinion that a cooperative grazing association which is organized pursuant to the provisions of chapter 36-08 of the North Dakota Century Code and which has seventy-five percent of its members or stockholders who are actual farmers residing on farms or who are principally dependent on farming for their livelihood is exempt from the provisions of chapter 10-06, even though it is organized and operating under the laws pertaining to cooperative associations, chapter 10-15. The fact that an association may be organized and operating under one or another provision of law is not in itself controlling. The controlling factor is whether or nor the cooperative comes within the exemption provisions set out in section 10-06-04.

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