

**OPINION
52-22**

February 28, 1952 (OPINION)

CORPORATIONS

RE: Classes of Stock for Cooperatives

According to your letter of February 20, 1952, a group of cooperatives actively engaged in business and in the course of past activities, have used common voting stock and class "A" nonvoting stock as described below:

COMMON VOTING STOCK. The common voting stock is restricted so that the same may be held only by agricultural producers or cooperative associations composed of agricultural producers and the common voting stock is the only voting stock of the association.

CLASS "A" NONVOTING STOCK. Class "A" stock may be issued to any person, association, or corporation but shall have no voting power or rights and shall not entitle the holder thereof to participate in the management of the affairs of the association. Actually the class "A" nonvoting stock is issued as patronage refund stock to persons not entitled to hold common voting stock.

You further state that they now desire to use preferred stock in addition to the types of stock listed above and which preferred stock would be issued as follows:

PREFERRED STOCK. Preferred stock shall be issued to any person, association, or corporation and shall be entitled to dividends before any dividends are paid on the common or class "A" stock.

An opinion is requested from this office as to whether or not the issuance of such preferred stock is authorized under the provisions of chapter 10-15 of the North Dakota Revised Code of 1943.

It is our opinion that the issuance of preferred stock by the cooperatives would be authorized in view of the following provisions of our code.

Section 10-1518 provides, "An association may provide, in its articles of incorporation or by-laws, terms, and limitations of stock ownership not inconsistent with this chapter.

Section 10-1502 of the N.D.R.C. of 1943 provides, "Persons desiring to form a cooperative association shall comply with the provisions of this chapter and also with the provisions of chapters 2 and 3 of this title which are not inconsistent with this chapter, except as otherwise provided herein.

It is therefore apparent that sections 10-0301 of the N.D.R.C. of 1943, being consistent with chapter 15 of title 10, would apply in determining the authorization of classes of stock as this section sets forth, "Every corporation shall have power to create two or more

kinds of stock of such classes, with such designations, preferences, and voting powers, or restriction or qualification thereof, as shall be stated and expressed in its articles of incorporation.

It is, therefore, our opinion that a cooperative corporation has the power to create an additional kind of call of stock, with designations, preferences, and voting powers or restrictions or qualifications as deemed proper.

Section 10-0301 of the N.D.R.C. of 1943 provides, however, that to avail themselves of additional class of stock, the designation, preferences, etc. must be stated and expressed in the articles of incorporation. There is no question in our minds that at the time of incorporation if appropriate provisions for such stock are provided in the articles of incorporation, the issuance of the preferred stock would be authorized. It is also our opinion that cooperative associations have authority to avail themselves of preferred stock, assuming the original articles of incorporation make no provision for such stock, by appropriate amendments of the articles of incorporation following the provisions as set forth in sections 10-0504, 10-1506, and 10-1507 of the N.D.R.C. of 1943 which sets forth the proper procedure for amending articles of incorporation.

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