

OPINION
57-53

July 8, 1957 (OPINION)

COOPERATIVE ASSOCIATIONS

RE: Foreign - Licensing

With reference to the above captioned matter, our attention has been directed to correspondence from that company to you dated June 20, 1957, in which they inquire "Should we not be eligible to be licensed in North Dakota as a cooperative, as we are in other states?" Their inquiry is made preliminary to their attempt to comply with the new North Dakota Cooperative Association Act (Chapter 104 Session Laws 1957). From the penciled annotation to the referred to letter, it appears that the company is now authorized to do business in North Dakota as a foreign cooperative.

Subsection 2, section 10-1501, chapter 104 of the North Dakota Session Laws of 1957, defines "foreign cooperative." That subsection provides that "foreign cooperative" means: (1) an association incorporated under a cooperative law of another state, (2) having members residing within this state, (3) and is operating on the following cooperative basis: (a) either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital he owns therein, or (a-1) the foreign cooperative does not pay dividends on stock or membership capital in excess of eight percent per year, and (b) the foreign cooperative shall not deal in the products of or for non-members to an amount greater in value than such as are handled by it for members, and (c) the foreign cooperative must distribute its proceeds according to either the law governing cooperatives of this state or the law of the state of its incorporation.

From the information available to this office at the present time, it is not possible to determine whether the subject company is a "foreign cooperative" within the meaning of subsection 2 of section 10-1501 of the North Dakota Cooperative Association Act. It does appear from a reading of Article III of the Fourth Amended Articles of Incorporation of the subject company that in compliance with subsection 2, it is an association incorporated under the cooperative law of another state (California). However, it is not known whether it has members residing in North Dakota.

From a reading of Article IX it appears that the members have unequal voting power. This fact might disqualify the company under the first portion of subsection a, of subsection 2, unless compliance is had with the second half of that subsection. Article VIII provides for a revolving fund which is described and detailed in the by-laws which are not now available to this office. Article X provides that the property rights of the members is proportional to the amounts respectively paid into the revolving fund and reserve credits upon the books. It is not known without reference to the by-laws and/or corporate books what interest is paid on monies or other equities constituting the revolving fund. As originally organized the

association was a capital stock company. The equity of the original stockholders was transferred to the revolving fund when the capital structure of the company was changed. Apparently those original stockholders retain much if not all the same equity which they held in the original organization. If they are receiving dividends or interest payments in excess of eight percent per annum on their equity in the revolving fund, it appears that the company will not be able to qualify as a foreign cooperative.

Your attention is also invited to subsection 2-B of section 10-1501. The company will not qualify as a "foreign cooperative" if it deals in products of or for non-members to an amount greater in value than such as are handled by it for members. Also according to the next following subsection (c) the foreign cooperative must distribute its proceeds according to either the law governing cooperatives in this state or in the state of its incorporation.

It is therefore the opinion of this office that before answering the query contained in the aforementioned letter, and before allowing the subject company to qualify as a foreign cooperative under the North Dakota Cooperative Association Act, you should obtain the following:

1. A copy of the by-laws of the company and such financial records as will enable you to determine the operation of the revolving fund and the interest paid on monies comprising the same;
2. Information as to whether there are any members in the state of North Dakota;
3. Information as to the amount of products handled for nonmembers as compared with the amount of products handled for members;
4. Information to determine whether the company distributes its proceeds according to the cooperative laws of this state or of the same of California.

It is the opinion of this office that until such information is obtained, it is impossible to determine whether the Exchange Lemon Products Company is a "foreign cooperative" within the meaning of the new North Dakota Cooperative Association Act.

The procedure for admission of a foreign cooperative is to be found in section 10-1551 of the new act. Authority for the procurement of the information above referred to may be found in subsection 9 of section 10-1551 which provides that the Secretary of State may require "such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such cooperative is entitled to a certificate of authority to transact business in this state. . . ." The foregoing information relates only to qualification under the new act, which is permissible at the present time, but does not become mandatory until July 1, 1959. (See section 10-1560 of the new Act).

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