



OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

JOHN C. DANFORTH  
ATTORNEY GENERAL

February 3, 1976

OPINION LETTER NO. 26

Honorable James C. Kirkpatrick  
Secretary of State  
State Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Kirkpatrick:

This letter is in response to your question asking:

"Section 357.170 RSMo 1969 provides in pertinent part: 'Prior cooperative associations.--all cooperative agricultural corporations, companies or associations, coming within the purview of this law, and heretofore organized and doing business under prior statutes and which have attempted so to organize and do business, shall have the benefit of all provisions of this law and be bound thereby on filing with the secretary of state. . . .'

"Query:

Does this section pertain only to those corporations organized and doing business prior to the passage of the law which included Section 357.170 (May 24, 1919); or do the words 'heretofore organized and doing business under prior statutes. . . .' mean those corporations organized previous to any given time of application for authority to accept the provisions of Chapter 357."

You also state that:

"In recent months several corporations organized under other chapters of the law (and

Honorable James C. Kirkpatrick

subsequent to May 24, 1919) have applied for acceptance of the provisions of Chapter 357. In doing so, these corporations have relied upon the provisions of Section 357.170. Inasmuch as Section 357.170 uses the words 'heretofore organized and doing business' rather than using the specific date 'organized and doing business before May 24, 1919,' clarification is requested as to the real meaning of the section."

The full context of the section about which you inquire, Section 357.170, RSMo, is as follows:

"All cooperative agricultural corporations, companies or associations, coming within the purview of this law, and heretofore organized and doing business under prior statutes and which have attempted so to organize and do business, shall have the benefit of all provisions of this law and be bound thereby on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that such cooperative company or association has, by a majority vote of its shareholders, decided to accept the benefits of and to be bound by the provisions of this law."

We understand that the argument has been made that organizations formed after the effective date of Section 357.170, which originates from the Laws of Missouri 1919, p. 116, contend that the questioned language is not intended as a type of savings clause to refer to only those corporations existing prior to the time the law was first enacted. The argument is that the questioned language must mean that organizations can come within Chapter 357 if they are organized and doing business under Missouri statutes at the time they file the declaration with the Secretary of State.

It is conversely argued that the word "heretofore" as used in the section in question has a well-established meaning and that it does in fact refer to corporations existing prior to the effective date of such section which, as we stated, was in 1919.

The use of the word "heretofore" in statutes or in constitutional provisions is not uncommon. Thus, in Section 22(a) of

Honorable James C. Kirkpatrick

Article I of the Missouri Constitution, with respect to the right of trial by jury, it is stated that "the right of trial by jury as heretofore enjoyed shall remain inviolate." There does not appear to be any real question as to the fact that "heretofore" means prior to the effective date of such provisions, and we believe that it would be a strained construction to hold otherwise. See State v. Hamey, 67 S.W. 620 (Mo. 1902).

Therefore, we conclude that such corporations which were organized after the effective date of Section 357.170 are not within the scope of the provisions of said section.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General