

NON-PROFIT ASSOCIATION: Entitled to purchase or manufacture and furnish electric current on non-profit cooperative plan.

10-29

October 28, 1935.

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Honorable Russell Maloney,
Corporation Commissioner,
Capitol Building,
Jefferson City, Missouri.

Dear Sir:

We are in receipt of your letter of October 10th, together with Articles of Association, wherein you state as follows:

"We have inquiry as to whether or not a corporation organized under Article 24, Chapter 87, Revised Statutes of Missouri, 1929, can incorporate to use electricity for lighting and power for the homes and farms of its members and as a result take advantage of The Federal Electrification Program.

"We herewith submit one of the proposals submitted to this department. You will notice that the seventh clause of the Articles submitted follows the Statute, Section 12678, with the addition of 'Farming' in the first line, of Sub-section (a), and adding 'or in manufacturing, buying and furnishing electric energy for power and light to operate the activities, machinery and equipment of its members' after the word 'equipment' in the seventh line of said Sub-section (a), and by adding the words 'including the building, owning and operating electric power lines for its members or itself. The purchase or manufacture of electric current, distribution of electric current to and for its members, for furnishing power and

light for the purpose of operating their farm machinery and equipment, lighting their farm houses and homes and for all other necessary activities and conveniences in the operation of a farm and farm home in a modern, scientific and up to date manner' after the word 'members' in the fifth line of Sub-section (f) of said Section 12678.

"The proponents of the proposed organization argue that they always have had, by implication, under the present law and all former Statutes the right to use the ox and the horse for power and the pine knot and the tallow dip for lights, and later the gasoline and oils for power and the coal oil for lights. They claim now that under the present law, by implication, they are entitled to the use of all incidental means of power and light that is necessary to conduct a modern and up to date farm, especially when the article of association specifically mention such powers and rights.

"All of this, especially in the view of the provisions of Sub-section (f) of said Section 12678 which provides 'and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged or any other rights, powers and privileges granted by the laws of this state to the ordinary corporations, except such as are inconsistent with the express provisions of this article', which seems to take care of all implied and incidental powers and purposes.

"We are cited to the case of State v. Long-Bell Lumber Co., 12 S.W. (2) 64 as a precedent and sample of the holding of the courts of this state in their liberal construction of incidental and implied powers.

"We respectfully submit these articles and ask that, if and when they are properly executed the corporation will be entitled to engage in all of the activities therein provided and especially those of purchasing or manufacturing and furnishing electric current for its use and the use of its members on the non-profit cooperative plan."

Sub-sections (a) and (f) of Section 12678, R. S. Mo. 1929:

"(a) To engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association, however, shall handle the agricultural products of any non-member.

"(f) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated;

Proposed Non-profit Association under Section 12678, R. S. Mo. 1929:

"(a) To engage in farming and in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in manufacturing, buying and furnishing electric energy for power and light to operate the activities, machinery and equipment of its members; or in the financing of any such activities; or in any one or more of the activities herein specified.

"(f) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated;

or conducive to or expedient for the interest or benefit of the association; to contract accordingly; and in addition to exercise and possess all powers rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged or any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this article."

or conducive to or expedient for the interest or benefit of the association or its members including the building, owning and operating electric power lines for its members or itself, the purchase or manufacture of electric current, distribution of electric current to and for its members for furnishing power and light for the purpose of operating their farm machinery and equipment, lighting their farm houses and homes and for all other necessary activities and conveniences in the operation of a farm and farm home in a modern, scientific and up to date manner; to contract accordingly, and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which this association is organized or to the activities in which it is engaged, or in any other rights, powers and privileges granted by the laws of this state to ordinary corporations."

The question presented is whether a non-profit cooperative association organized under Article 24, Chapter 87, of the Revised Statutes of Missouri, 1929, and having the powers granted it by Section 12678, supra, is entitled to purchase or manufacture and furnish electric current for its use and the use of its members.

In the case of *Steinway v. Steinway & Sons*, 40 N. Y. S. 718, 1. c. 720, the court in holding that it was not ultra vires for a manufacturing corporation to purchase a large tract of land for the purpose of erecting thereon factories and residences for its employees, and to contribute towards the establishment there of a church, a school, a free library, and a free bath for its employees, said:

"If that act is one which is lawful in itself, and not otherwise prohibited, is done for the purpose of serving corporate ends, and is reasonably tributary to the promotion of those ends, in a substantial, and not in a remote and fanciful, sense, it may be fairly considered within charter powers. The field of corporate action in respect to the exercise of incidental powers is thus, I think, an expanding one. As industrial conditions change, business methods must change with them, and acts become permissible which at an earlier period would not have been considered to be within corporate power."

The use of electricity for lighting and power for the homes and farms of members of the association is serving and promoting corporate ends and cannot by any stretch of the imagination be said to be remote and fanciful. Electricity is just as essential today in the operation of a modern farm as the ox and the horse were in a former day.

In the case of *People v. Orange County Farmers' and Merchants' Association*, 204 Pac. 873, l. c. 874, a non-profit association was organized for the purposes, as stated in its articles of association, "to establish a farmers', fruit growers', merchants', and business men's improvement, information, and publicity bureau and society for the benefit and mutual improvement of the members of the association, and to facilitate the exchange of information, advices, ideas, crops, weather and financial reports, and other communication among its members." The court in holding that a telephone system for the convenience of its members only was a mere incident to the carrying into effect of the purposes of the association, and that it did not itself become a telephone corporation, said:

"As a mere incident to the carrying into effect of such purposes the defendant has undertaken to install a telephone service for the use of its members only and not for general public use or service. It could not be said that by the installation of such a system as an incident to the diversified

business, the owners of the establishment, whether corporate or not, had gone into the telephone business. * * *."

The Missouri Supreme Court in the case of *State ex inf. Gentry v. Long-Bell Lumber Co.*, 12 S. W. (2d) 64, held that a corporation created for the business of lumber manufacturing under the statute providing for the organization of manufacturing and business corporations, had the implied power, among other things, to purchase and develop a town site and provide living facilities suitable for the needs of its employees by building and selling or renting homes, to build and operate a hotel near the site of operations, to spend money in advertising, and to publish a newspaper. The court in discussing the implied powers of a corporation states as follows:

"It is also well at this point to consider the rule applicable to implied powers. Little difficulty will be encountered in ascertaining whether a given activity is within the express charter powers, once the language of the charter is known, but a much more difficult problem is presented when it becomes necessary to determine whether a given activity is within the implied corporate powers. The applicable rule appears to be well settled and was tersely and accurately stated by Walker, J., speaking for the court in banc in the case of *State ex inf. v. Missouri Athletic Club et al.*, 261 Mo. 576, loc. cit. 599, 170 S. W. 904, 909 (L.R.A. 1915C, 876, Ann. Cas. 1916D, 931), as follows:

"(Implied powers) are defined to be those possessed by a corporation not indispensably necessary to carry into effect others expressly granted, and comprise all that are appropriate, convenient and suitable for that purpose, including as an incidental right, a reasonable choice of the means to be employed in putting into practical effect this class of powers."

"The same was again stated in the fairly recent case of *State ex rel. v. Bank*, 297 Mo. 397, 249 S. W. 619, loc. cit. 622,

30 A. L. R. 918:

"Stated another way, "a power is implied when reasonably necessary to enable the corporation to accomplish the objects of its creation," provided always, of course, that those objects are such as are recognized and permitted by the charter granting power. Furthermore, any particular act, to be justified under implied power, must be "directly and immediately appropriate to the execution of the specific powers granted by the charter and not bear a slight or remote relation to them." 2 Fletcher Cyc. Corp. pp. 1748 and 1770, pars. 793 and 795.

"While, as above stated, little difficulty is met in ascertaining the rule, a difficult problem often presents itself in applying the rule. In this behalf it has been very appropriately said: "The rules laid down above as to implied powers are well settled and are, at the present day, not even questioned by courts or writers. The difficulty comes in applying the rules. It is easy to say that a power is implied if it is 'reasonably necessary' to the exercise of express powers, but there is no test to decide whether a particular act, done by a particular corporation, under particular circumstances, is 'reasonably necessary.' Of course, many acts are clearly on one side of the line or the other. But there are many close to the dividing line, which occasions more or less confusion in the decisions. The result is the rule that whether an act comes within the implied powers of a corporation 'must be determined in each case from all its facts and circumstances.' In an early Massachusetts case Chief Justice Shaw said: 'The extent and limits of these implied duties and powers, in the absence of positive provision in the legislative act by which the power is granted, can only be determined by considering what is reasonable in each case.'

'The authority of a corporation to perform a particular act is always dependent to a very considerable extent upon the facts and circumstances existing at the time when it is proposed to perform the act.'

'Exceptional circumstances or extraordinary conditions may make it necessary to the proper prosecution of the business of a corporation that it shall be accorded implied power to perform acts beyond its express power, and which, except for the prevailing conditions, would be wholly unwarranted.'"
2 Fletcher Cyc. Corp. 1778, par. 802, and many cases therein cited.'"

The Long-Bell Lumber Company case, supra, is in line with the courts of other jurisdictions which are in fair agreement as to the general nature and extent of the implied or incidental powers of a corporation. They all indorse the proposition that a corporation has authority to do what will legitimately tend to effectuate its express purposes and objects; that it may ordinarily do all the things that are convenient, suitable, or necessary to enable it to fully perform the undertaking designated in its charter and which generally and customarily attend the business for which it was granted.

In view of the liberal position taken by the courts as to the general nature and extent of implied and incidental powers of a corporation, and the general recognition of the widespread use of electricity as an absolute necessity to the scientific conduct of modern business and industry, in which farms may be included, together with the broad authority of sub-section (f) of Section 12678, supra, conferring all implied and incidental powers to the purposes for which the association is organized and the activities in which it is engaged, we are of the opinion that if and when the enclosed articles are properly executed, the corporation will be entitled to engage in all of the activities therein provided,

Honorable Russell Maloney

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October 26, 1935.

and especially those of purchasing or manufacturing and furnishing electric current for its use and the use of its members on the non-profit cooperative plan.

Respectfully submitted,

Wm. OGDEN SNEYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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