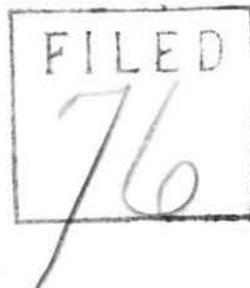


RESETTLEMENT ADMINISTRATION - Soil Conservation: Linn Co. Soil Conservation Association may incorporate under Secs. 12676-12705 by complying with terms of said statutes and then engage in production and distribution of agricultural lime stone.

September 17, 1936.

9-17



Mr. Phil G. Rohan,  
Acting Regional Attorney,  
Resettlement Administration,  
342 Massachusetts Avenue,  
Indianapolis, Indiana.

Dear Sir:

This department is in receipt of your letter of September 5 regarding the Linn County Soil Conservation Association, which is as follows:

"The Linn County Soil Conservation Association was incorporated by Pro Forma decree of the Circuit Court of Linn County, Missouri, under the provision of Article 10, Chapter 32, of the Revised Statutes of Missouri, 1929 'to engage in any activity in connection with the promotion, fostering, encouragement and facilitation of soil conservation. \* \* \*'

"This Cooperative Association has applied to the Resettlement Administration for a loan which will enable it to engage in the production and distribution of agricultural lime stone, inasmuch as Section 5003 of the Statute, to which reference has been made, provides that associations formed for agricultural purposes cannot be incorporated under this Article. The Association at the present is not validly incorporated. Consequently, to enable them to obtain the requested loan, it will be necessary that they reincorporate.

"We respectfully request your opinion as to whether an association of the type described might be validly incorporated under the provisions of Article 24 of Chapter 87 of the Revised Statutes."

The sections to which you have reference under Chapter 87, Article 24 are 12676 to 12705, inclusive. Section 12677, R.S. Mo. 1929, being pertinent to the question, provides:

"Eleven (11) or more persons, a majority of whom are residents of this state, engaged in the production of agricultural products, may form a non-profit cooperative association, without capital stock, under the provisions of this article, for the following purpose or purposes: To engage in any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping or utilization thereof or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein."

The above statute appears to contemplate that the activities to be carried on by the association are to be non-profitable in nature and to relate to the marketing or selling of agricultural products or other matters relating to the same, or as the statute states "or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies."

Section 12678, R.S. Mo. 1929 enumerates the powers of the association after being incorporated. Subsection (f) is as follows:

"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; 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."

Although the right to engage in the production of agricultural lime stone is not specifically mentioned, we think the statute, in enumerating the powers of the association, is broad enough to include the same.

The statutes referred to above have not been directly interpreted. However, in the case of *Bank of Aurora v. Aurora Cooperative Fruit G. & M. Ass'n.*, 91 S.W. (2d) 177, these statutes are commented on as follows:

"Section 12678, subsec. (a), Rev. St. Mo. 1929, Mo. St. Ann. Sec. 12678 (a), p. 509, provides that each association shall have the power to engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, 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. Subsection (b), Sec. 12678, Rev. St. 1929, Mo. St. Ann. Sec. 12678 (b), p. 509, allows the association to borrow money without limitations as to amount of corporate indebtedness or liability, and to make advance payment to members. Subsection (c), Sec. 12678, Rev. St. 1929, Mo. St. Ann. Sec. 12678 (c), p. 509 allows the association to act as the agent or representative of any member or members in any of the above mentioned activities.

"Undoubtedly, under these sections of the statute, the association had the right to purchase the supplies sold to it by the appellant, and to pledge

the credit of the members of the association for the payment of these supplies, to an extent of the amount due each member and remaining unpaid under his marketing contracts.

"If the association had the right to purchase, on behalf of its membership, the supplies mentioned, then it undoubtedly had the right to pay for these supplies. Under the statute it was given the right to purchase, and therefore the obligation to pay, as a matter of course, must be presumed, subject to the limitation that no member should be liable for more than the sum remaining unpaid on his marketing contracts.

"The statutes and by-laws make the association the agent of the members, and its method of distribution of the crates, boxes and other supplies to its members was a matter solely between it and the membership, as well as its method of collecting therefor. In the purchase of these supplies, we must hold the entire credit of the association, subject to the statutory limitation, was pledged by the association, and that the question of accounting as between itself and its members is solely one as between principal and agent, not affecting the creditor who sold, on the strength of the association's right to purchase the crates and other supplies.

"If the bank had not failed, then the association undoubtedly would have had a right to pay this amount directly from the funds in the bank, and apportion the payment between its members in accordance with its agreement with its membership.

"No distinction as to the liability of a member is made between an association member and an individual. \* \* \* "

The case of Mutual Orange Distributors v. Black, et al, 221 Mo. App. 493, while not bearing on the question directly, shows the similarity of the statutes of the State of Missouri and the State of California, and in interpreting the words "profit" and "pecuniary profit", the Court said (l.c. 494):

"The evidence shows that plaintiff, Mutual Orange Distributors, is incorporated under the non-profit cooperative corporation laws of California and was organized for the purpose of business without profit. It - - '\* \* \* operates as a definite selling organization that simply at the beginning of each year gets an estimate idea of what the cost of selling is going to be for the year. For instance, thirteen cents per hundred; and if they find in any year the cost of selling is less than that, the difference between the cost and the thirteen cents is rebated to the grower.'

"The stockholders are the growers of fruit and its business is 'to market the crop for the growers at the actual cost.'

"The question, then, to be determined is as to whether plaintiff is organized for pecuniary profit within the meaning of said sections of our statute. Cooperative associations or corporations of the character involved here are of comparatively recent origin. We find upon examination that most of the statutes concerning agricultural or horticultural cooperative associations provide for similar methods of doing business. The statutes of California (see Kerr's Cumulative Supp. Ann. 1906, 1913, to Cyc. Codes of California, p. 972) on the subject, as does our statute (Laws of 1923, p. 111) refer to such corporations as 'non-profit cooperative associations,' and the statutes of the two States are similar to their provisions. The word 'profit' or 'pecuniary profit' has no definite meaning of general application, but are to be

construed in reference to the particular facts and circumstances under which they are used. Our law concerning the formation of non-profit cooperative associations, passed after this suit was instituted, contains a definition of a 'non-profit' association, which being a declaration of the law making body of this state upon the subject, is worthy of consideration. In view of the uncertainty of the meaning of the word 'profit' or 'pecuniary profit', we think that this definition should be followed, in the absence of any other authority on the subject in cases of this kind and in view of the fact that it covers a subject-matter exactly like the one before us. Section 1 of the Act, under the heading of 'Defining terms used in act,' provides - -

'(e) Associations organized hereunder shall be deemed "non-profit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.'

#### CONCLUSION

We are of the opinion that the Linn County Soil Conservation Association may incorporate under the provisions of Sections 12676 to 12705 inclusive by complying with the terms of said statutes and that it may organize for the objects as mentioned in Section 12677, R.S. Mo. 1929 and then engage in the production and distribution of agricultural lime stone.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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

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