

COOPERATIVES: Under Article 29 or Chapter 87, R. S. Mo. 1929,
must be organized primarily for agriculture.

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

Dear Sir:

This department is in receipt of your letter of
January 27th, wherein you state as follows:

"Section 12748, Revised Statutes of
Missouri, 1929, provides as follows:
'Any number of persons, not less than
twelve (12), may associate themselves
together as a co-operative associa-
tion, society or exchange, having all
the incidents, powers and privileges
of corporations, for the purpose of
conducting any agricultural or mer-
cantile business on the co-operative
plan, including the buying, selling,
manufacturing, storage, transportation
or other handling or dealing in or with
by associations of agriculturists, of
agricultural, dairy or similar products,
and including the manufacturing trans-
formation of such articles into
products derived therefrom, and for
the purpose of the purchasing of or
selling to all shareholders and others
groceries, provisions and all other
articles of merchandise.'

"The department requests the favor of
an opinion from your office as to whether
or not by the use of the words 'or mer-
cantile business on the co-operative plan',
as used in the above section, extends the

right, on the part of individuals, to incorporate under that act a mercantile business not directly connected or incident to agricultural activities.

"In connection with the above query, we call your attention to Section 12761, Revised Statutes of Missouri, 1929, which provision extends only to cooperative agricultural corporations heretofore organized the legal right to come within the provisions of this act. It would seem, by this section, that it was the intent of the Legislature to restrict cooperative companies to agricultural enterprises or such enterprises that extend aid to agriculturists.

"The Department has had applications on the part of incorporators who desire to operate oil stations under the cooperative act which prompts this request for an opinion."

Section 12748 of Article 29 of Chapter 87, Revised Statutes of Missouri, 1929, permits the organization of cooperatives by associations of agriculturists for the purpose of conducting any agricultural or mercantile business.

In determining the meaning of the above section, we ask the question, how many persons may associate themselves together as a cooperative, and the answer is, any number of persons not less than twelve. For what purpose? Conducting any agricultural or mercantile business. What does this include? The buying, selling, manufacturing, storage, transportation or dealing in or with of agricultural, dairy or similar products. By who? By associations of agriculturists. What else does it include? The manufacturing and transformation of such articles into products derived therefrom. And for what other purpose? The purchase and selling to all shareholders and others groceries, provisions and all other articles of merchandise.

A comma after the word "with" would have clarified the intent of the Legislature that the persons associating themselves for the purpose of conducting a mercantile or agricultural business on the cooperative plan must be agriculturists, reading thus:

"* * *including* * *the handling
or dealing in or with, by associations
of agriculturists, of agricultural,
* * *."

In the case of State vs. Mooneyham, 253 S. W. 1098, l. c. 1100, 212 Mo. App. 573, the court in holding that if the intent of the Legislature was reasonably clear, errors in punctuation would be corrected, said:

"If the intent of the Legislature is reasonably clear, then all grammatical errors and errors in spelling and punctuation are disregarded or corrected."

Section 12761, R. S. Mo. 1929, lends further emphasis to the conclusion that Article 29 extends only to cooperatives organized by agriculturists:

"All co-operative 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."

In the case of Charleston Oil Co. vs. Poulnot, 141 S.E. 454, l. c. 456, 457, the court in holding that the term "merchandise" included gasoline and motor oil, said:

"(714) Sec. 2. Penalty for Selling Goods on Sunday. - No person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or showed forth, or exposed to sale.'

"Does the word 'merchandise,' as used in Section 714, include gasoline and motor oils? In Webster's New International Dictionary, the word 'merchandise' is defined as follows:

"The objects of commerce; whatever is usually bought or sold in trade, or market, or by merchants; wares; goods; commodities.'

"In the well-recognized authority, 2 Bouv. Law Dict. p. 2195, the following definition is given to the word:

"A term including all those things which merchants sell, either wholesale or retail: as, dry goods, hardware, groceries, drugs, etc. It is usually applied to personal chattels only, and to those which are not required for food or immediate support, but such as remain after having been used, or which are used only by a slow consumption.* * *

"It may be and often is used as the synonym of "goods," "wares" and "Commodities."'

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"Under the definitions referred to in the authorities above cited, and in line with the former decisions of this court, we think there can be no doubt that gasoline and motor oils are embraced in the term 'merchandise' as used in the statute."

From the foregoing, we are of the opinion that not less than twelve persons engaged primarily in agriculture may organize under Article 29 of Chapter 87 of the Revised Statutes of Missouri, 1929, and as an incident to their business purchase and sell to their members and others groceries, provisions and all other articles of merchandise, including gasoline and motor oil.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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