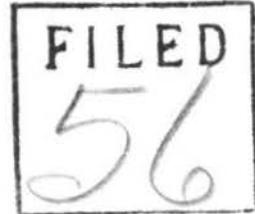


CO-OPERATIVE ASSNS. - DEFINITION OF WORDS - MERCANTILE BUSINESS OR
CO-OPERATIVE PLAN

July 16, 1937.

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Honorable Russell Maloney
Corporation Commissioner
Capitol Building
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your letter of July 9th, 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 association, society or exchange, having all the incidents, powers and privileges of corporations, for the purpose of conducting any agricultural or mercantile 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 transformation 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 mercantile 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 heretofore submitted the above inquiry to your office but due to the many recent requests that we again submit the question to your office for further consideration accounts for our resubmission of this question for further consideration on the part of your office."

Section 12748, supra, states that,

"Any number of persons, not less than twelve (12), may associate themselves together as a co-operative association, society or exchange, having all the incidents, powers and privileges of corporations, for the purpose of conducting any agricultural or mercantile business on the co-operative plan, * * * *."

The statute reads, "Any number of persons, not less than twelve (12)." No limitation here that they be engaged in agricultural pursuits. "May associate themselves together as a co-operative * * * for the purpose of conducting any agricultural or mercantile business on the co-operative plan." They may engage in the agricultural "or" in the alternate, mercantile business. Were we then to halt here, there would still be no limitation that the twelve or more persons must be engaged in agricultural pursuits.

The statute then reads further and provides that the agricultural or mercantile business on the co-operative plan is "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 transformation 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."

In an opinion directed to you under date of February 16, 1937, we took the position that the statute restricted the organization of co-operatives for agricultural or mercantile business to "associations of agriculturists," however, our attention has been called to the fact that the word "including," as used in the statute, is a word of enlargement and not of limitation. Generally speaking, this may be said to be true, but an examination of the Journals of the Legislative Assembly showing the original bill and amendments thereto reveals a different intent on the part of the Legislature.

The statute being of doubtful meaning we may resort to the journals of the Legislative Assembly to ascertain the intent of the Legislature. Thus, in the case of *Ex parte Helton*, 93 S. W. 913, 117 Mo. App. 609, l.c. 620, we find the following language of the court:

"Sutherland says: 'The proceedings of the Legislature in reference to the passage of an act, may be taken into consideration in construing the act. Thus reports of committees made to the Legislature have been held to be proper sources of information in ascertaining the intent or meaning of the act. Amendments made or proposed and defeated may also throw light on the construction of the act as finally passed and may properly be taken into consideration.'
(2 Sutherland on Construction of Statutes, sec. 470.)

"In *Edgar v. Board of Commissioners*, 70 Ind. l. c. 338, the court said: 'Where as in this

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case a statute has been enacted, which is susceptible of several widely different constructions, we know of no better means for ascertaining the will and intention of the Legislature than that which is afforded in this case by the history of the statute as found in the journals of the two legislative bodies."

A further guide in ascertaining the intent of the Legislature is to examine the title to the act, it being an essential part thereof. The court in the case of *Sharp v. Producers Produce Company*, 47 S. W. (2d) 242, 226 Mo. App. 189, l. c. 192, in declaring this principle, states that,

"Since the title to an act is essentially a part of the act and is itself a legislative expression of the general scope of the bill, it may be looked to as an aid in arriving at the intent of the Legislature."

The House Journal, Vol. 1, 50th General Assembly (p. 502) shows that the original bill was introduced on February 26, 1919, by Mr. Wagner and entered upon the calendar as "House bill No. 845." The title to the bill as introduced reads as follows:

"An act to provide for the formation of co-operative agricultural or horticultural associations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, and for other purposes;"

On March 5th the bill was read a second time and referred to the Committee on Agriculture (H. J. p. 616).

On March 12th the bill was reported by the Committee with the recommendation that the bill "do pass" with committee substitute as follows (H. J. pp. 732,733):

"An act to provide for and authorize the incorporation of agricultural co-operative associations for the purpose of conducting any agricultural 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 transformation of such articles into products derived therefrom,"

On March 20th the bill was placed on special order of business for 2 p. m. Monday, March 23, 1919 (H. J. p. 841).

On March 24th the committee substitute for the bill was taken up for engrossment and the following proceedings had (H. J. pp. 880, 881, 882):

"On motion of Mr. Wagner, committee substitute for House bill No. 845 was taken up for engrossment.

"Committee substitute for House bill No. 845, entitled

"An act to provide for and authorize the incorporation of agricultural co-operative associations for the purpose of conducting any agricultural business on the co-operative plan, including the buying, selling, manufacturing, storage, transportation, or other handling or dealing in or with by associations of agriculturalists, or agricultural, dairy or similar products, and including the manufacturing transformation of such articles into products derived therefrom.

"Mr. Wagner offered the following amendment to committee substitute for House bill No. 845:

"Amendment No. 1.

"Amend the title to committee substitute for House bill No. 845 by inserting in line 5 before the word 'associations' the word 'by;' also, amend the said title by changing the word 'agriculturalists' to read 'agriculturists.'

"Which was read and adopted.

"Mr. Wagner offered the following amendment to committee substitute for House bill No. 845:

"Amendment No. 2.

"Amend section 1, line 9 of committee substitute for House bill No. 845 changing the word 'agriculturalists' to 'agriculturists.'

"Which was read and adopted.

"Mr. Warren offered the following amendment to committee substitute for House bill No. 845:

"Amendment No. 3.

"Amend committee substitute for House bill No. 845 by inserting before the word 'business' in line 6 of section 1 of the printed bill the following words: 'or mercantile,' and by striking out the period in line 11 of section 1, inserting a comma and the following words: 'and for the purpose of purchasing or of selling to all shareholders and others groceries, provisions, and all other articles of merchandise.'

"Which was read and adopted.

"Mr. Wagner offered the following amendment to committee substitute for House bill No. 845:

"Amendment No. 4.

"Amend committee substitute for House bill No. 845 by inserting before the word 'co-operative' in line 2 of the title and before the word 'business' in line 3 of the title the following words: 'or mercantile,' and by striking out the period at

the end of the title, inserting a comma and the following words: 'and for the purpose of the purchasing of or selling to all shareholders and others groceries, provisions, and all other articles of merchandise.'

"Which was read and adopted.

"On motion of Mr. Wagner, committee substitute for House bill No. 845 was ordered engrossed and printed as amended.

"On motion of Mr. Whitaker, the vote by which the committee substitute for House Bill 845 was ordered engrossed and printed was reconsidered.

"On motion of Mr. Wagner, committee substitute for House bill No. 845 was read and adopted.

"On motion of Mr. Wagner, committee substitute for House bill No. 845, as amended, was ordered engrossed and printed."

On March 31st the Committee on Engrossed Bills reported the following entitled bill as correct (H. J. p. 992):

"An act to provide for and authorize the incorporation of agricultural or mercantile co-operative plan, including the buying, selling, manufacturing, storage, transportation, or other handling or dealing in or with by associations of agriculturists, of agriculture, dairy or similar products, and including the manufacturing transformation of such articles into products derived therefrom, and for the purpose of the purchasing or of selling to all shareholders and others groceries, provisions, and all other articles of merchandise,"

On April 2d Mr. Wagner called up Committee substitute for the bill for third reading and final passage, entitled (H. J. p. 1036):

"An act to provide for and authorize the incorporation of agricultural or mercantile co-operative associations for the purpose of conducting any agricultural or mercantile 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 or transformation 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 merchandize,"

Bill was read third time and passed with an emergency clause (H. J. 1036, 1037).

On May 2d a message was received from the Senate adopting the above entitled bill (H. J. Vol. II, p. 1979).

On May 7th Committee on "Enrolled Bills" reported the following entitled bill (H. J. 2131):

"An act to provide for and authorize the incorporation of agricultural or mercantile co-operative associations for the purpose of conducting any agricultural or mercantile business on co-operation 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 transformation of such articles into products derived therefrom, and for the purpose of purchasing of or selling to all shareholders and other groceries, provisions and all other articles of merchandise, with an emergency clause,"

which was signed by the Speaker (H. J. p. 2135).

An examination of the bill as introduced reveals that it was the intent of the Legislature to restrict formation of co-operatives to "associations of agriculturists" (H. J. p. 732), the word "including being a part of the title of the act before the words "or mercantile" were included by committee substitute. If the title to the act as introduced had included the authorization to organize any agricultural or mercantile business on the co-operative plan and then it followed with the word "including," there would be merit to the contention that the word as used is merely one of enlargement and not restriction. However, such is not the case.

Further emphasis to the contention that the Legislature was primarily interested in the welfare of those engaged in agricultural pursuits is lent by the emergency clause of the act, which provides as follows (Laws of Missouri, 1919, Sec. 18, pp. 119, 120):

"This act being for the immediate preservation of agricultural products and the like, and being necessary for the immediate conservation of the welfare of the agricultural part of the state, an emergency is hereby declared to exist within the meaning of the Constitution, and therefore, this act shall go into effect immediately upon its passage and approval."

It is evident from the foregoing that the Legislature's intent was to permit associations of agriculturists to organize co-operatives for agricultural or mercantile purposes in order to preserve their products and was not interested nor did it authorize, as far as this particular act is concerned, the creation of co-operatives by groups of individuals for the purpose of purchasing and selling groceries, gasoline, et cetera.

The act was originally placed under the chapter entitled "corporations" and at present is under the heading of "agriculture." However, as pointed out by the court in the case of State v. Maurer, 164 S. W. 551, 255 Mo. 152, the headings of chapters, articles and sections in the revised statutes are merely arbitrary designations inserted for convenience of reference and

have no legislative authority to lessen or expand the letter or meaning of the law.

Further evidence of legislative intent is Section 12761, R. S. Mo. 1929, as follows:

"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 co-operative 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."

The specific mention that agricultural cooperatives organized prior to the act could avail themselves of the benefit of the law, clearly implies the exclusion of prior cooperatives engaged in the mercantile business. The court in the case of *Kansas City, Mo., v. J. I. Case Threshing Mach. Co.*, 87 S. W. (2d) 195, 1. c. 205, 337 Mo. 913, said:

"It is a general rule of (statutory) interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius.*" 25 R. C. L. 981, Section 229; 25 C. J. 220; 59 C. J. 980-986, Sections 580-583."

We are not unmindful of the fact that the Corporation Department has permitted co-operatives to be organized for mercantile business by individuals other than those engaged primarily in agricultural pursuits and that courts will give weight

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to the construction placed upon laws by departments administering same. However, the court will not sustain such construction if same is obviously wrong. Phelps v. Scott, 30 S. W. (2d) (Mo.) 69, 1. c. 71.

Upon reconsideration we are still of the opinion that not less than twelve (12) 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.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney-General

APPROVED:

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

MW:EG