CORPORATIONS--COMPANIES: Cooperative organizations cannot be organized under Article XXIX, Chapter 87, R. S. Mo. 1929, for the sole purpose of operating a cooperative oil company, but may so operate under Article IX, Chapter 32, R. S. Mo. 1929.

October 15, 1934.

123

FILED
1

Mr. Geo. S. Alee, Chairman
Missouri State Petroleum Committee
358 Board of Trade Building
Kansas City, Missouri

Dear Sir:

This department is in receipt of your letter of recent date wherein you state as follows:

> "We have recently been advised that a group called the 'State Cooperative Club' has recently incorporated in this state and capitalized for $50,000, being located at Clayton, Missouri.
>
> "It is our understanding that this cooperative club was organized for the sole purpose of defeating the purposes of the Code of Fair Competition for the Petroleum Industry, in that they sell a membership for $1.00 which entitles the holder to patronage dividends.
>
> "We would be very glad to have an expression from your office as to whether or not a cooperative organization can be organized under the laws of Missouri for the sole purpose of operating a cooperative oil company."

There are two separate and distinct articles in the Revised Statutes of Missouri, 1929, dealing with Cooperative Companies. One comes under the Chapter heading of Agriculture and is designated as Article 29 of Chapter 87. The other comes under the Chapter heading of Corporations and is designated as Article IX of Chapter 32.

Article XXIX, Section 12748, R. S. Mo. 1929, authorizes a cooperative plan and reads in part 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. * *."

Article XXIX, Section 12766, R. S. Mo. 1929, from chapter on co-operative companies, reads as follows:

> "Any part or all of the common stock of any corporation organized for the purpose of conducting any agricultural or mercantile business on the co-operative plan as provided for by article 29, chapter 87, R. S. 1929, may be legally purchased and owned in all respects as if purchased and owned by a natural person, by any other corporation incorporated under the laws of Missouri on the co-operative plan, including any other corporation organized under article 29, chapter 87, R. S. 1929."

From the foregoing sections, it is clearly evident that co-operative companies may be organized for the purpose of conducting any agricultural or mercantile business on the co-operative plan.

In the case of In Re. Cameron Town Mut. Fire, Lightning and W. Insc. Co., (U. S.) 96 Fed. 756, l. c. 757, the Court defined the term "mercantile" in the following manner:

> "* * * * The word 'mercantile' in its ordinary acceptation, pertains to the business of merchants, and has 'to do with trade or the buying and selling of commodities.'* * * *."

In the case of Queen Insurance Co. v. State, 24 S. W. (Tex.) 397, l. c. 401, the Court, in defining the term "commodities" said:

> "The word is ordinarily used in the commercial sense of any movable or tangible thing that is ordinarily produced or used as a subject of barter or sale. * * * *."

Again in the case of Vequesney v. Kansas City, 266 S. W. 700, l. c. 703, 305 Mo. 488, the Court held that the requirements of Section 7287, R. S. Mo. 1929, that a business must be specifically named as taxable in the charter before the city had power to impose a license tax, were sufficiently met by the Kansas City Charter, Article III, Section 1, cl. 4, enumerating "merchants"; and, in view of definition as "one making business of buying and selling commodities," the city was authorized to tax dealers in gasoline as "merchants".

From the foregoing cases, we are of the opinion that, as gasoline is termed a commodity, the same may be said of oil. The word "mercantile" in its ordinary acceptation pertains to the business of merchants and has "to do with trade or the buying and selling of commodities" and a company engaged in the oil business may therefore be said to be engaged in a mercantile business.

Since a company engaged in an oil business may be said to be engaged in a mercantile business, the question arises whether it was the intention of the Legislature to permit any number of persons, not less than twelve, to associate themselves as a co-operative organization for the sole purpose of operating a co-operative oil company, under provisions of Chapter 87, Article XXIX, R. S. Mo. 1929.

Article XXIX, Section 12748, R. S. Mo. 1929, reads 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. For the purposes of this section the words 'association', 'company', 'corporation', 'society' or 'exchange' shall be construed to mean the same.* * * *."

The title to the Act, providing for the incorporation of co-operative associations as set out in the Laws of Missouri, 1919, at page 116, reads as follows:

> "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 transformation of such articles into products derived therefrom, and for the purchasing of or selling to all shareholders and others groceries, provisions, and all other articles of Merchandise, with an emergency clause."

Thus we see that the title to the Act and the body of the Act are almost verbatim with each other, and are verbatim on essential matter. That which is underscored above appears both in the title to the Act and in Section 12758, R. S. Mo. 1929. It is our opinion that it was the intention of the Legislature and the purpose of the Statute as expressed by the body of the Act and title thereto, when construed togehher, to limit Article XXIX, Chapter 87, to associations of agriculturists, for as said in the case of Glaser v. Rothschild, 120 S. W. 1, 221 Mo. 190, l. c. 212, wherein our Court said:

> "There are many cannons of construction, but they all rest upon the common principle that if possible the intention of the Legislature must be ascertained. These rules are only valuable when they subserve this purpose. One of hhese rules of construction, long established in England, was that 'the title cannot be resorted to in construing the enactment.' (Hunter v. Nockalds, 1 McN & Gord. 651). But in this State and others, where the Constitution gives a peculiar significance and assigns particular importance to the title by requiring that a statute shall contain but one subject, 'which shall be clearly expressed in its title,' this common law cannon is clearly at variance with our methods of interpretation. On the contrary we hold that the title is necessarily a part of the statute and aids in and is a necessary guide to its right construction. (Endlich on Interpretation of Statutes, secs. 58, 59 and cases cited). So it was in Conn. Mut. Life Ins. Co. v. Albert, 39 Mo. 181; 'But the better rule, as we think, is to presume that the

> true intent and meaning is to be found in the title, unless it is plainly contradicted by the express terms of the body of the act.' "

From the foregoing cases and sections, we are of the opinion that it was not the intention of the Legislature to permit a co-operative organization to be organized under Article XXIX, Chapter 87 for the sole purpose of operating a co-operative oil company. As stated in Section 12748, supra, and as found in the Title of the Act in Laws of Missouri, 1919, supra, "by association of agriculturists, of agricultural, dairy or similar products, and including the manufacturing, transformation of such articles into products derived therefrom* * *", reading further "* * * *and for the purpose of purchasing or selling to all shareholders and others groceries, provisions, and all other articles of merchandise."

From this last phrase, we are of the opinion that although a co-operative organization cannot be organized under Article 29, Chapter 87, for the sole purpose of operating a co-operative oil company, yet incorporators under this section for agricultural purposes may purchase and sell oil to all shareholders and others; for as set out supra "oil is clearly included as a commodity or article of merchandise."

Since a co-operative company may not be organized under Article 29, Chapter 87 for the sole purpose of operating a co-operative oil company, the question arises whether they may do so by complying with all the provisions of Article 9 of Chapter 32, R. S. Mo. 1929, dealing with co-operative companies.

Chapter 32, Article 9, Section 4986, R. S. Mo. 1929, reads as follows:

> "Any person, copartnership, association, organization or corporation which is now engaged in or shall hereafter engage in issuing contracts or agreements, whether in the nature of a bond, debenture, certificate or otherwise, providing for the redemption, or the ful-

filling of such contracts or agreements by the accumulation of a fund or funds from the contributions made by the subscribers to, or the holders of such contracts or agreements; or providing for the maturing or fulfilling of such contracts or agreements in the order of their issue or in some other fixed or arbitrarily determined order or manner; or providing for the payment of moneys or the granting or giving of any consideration, of any money or property, personal, real or mixed, greater in value, or represented to be greater in value, than the amount paid in upon such contracts or agreements, together with the actual net earnings accrued and accumulated thereon; or providing for the loaning of the funds contributed by the subscribers to or the holders of such contracts or agreements to such subscribers or holders in any fixed or arbitrarily determined order or manner; or for the making of loans or advances from such funds to or for such subscribers or holders to be repaid in installments; except such persons, copartnerships, associations, organizations or corporations as are organized or doing business under the statutes now in existence or which hereafter may be enacted as excepted in section 4995 of this article, shall, and the same are required, for the protection of the subscribers to, or the holders of its contracts or agreements, to deposit with the state treasurer in cash, United States bonds, or bonds of any county, or municipal township, or such parts of each of the above mentioned securities so that the whole deposit shall be equal in cash value to the sum of twenty-five thousand dollars and whenever the liability of such contracts or agreements, as hereinafter determined,

> shall exceed the amount of such deposit, there shall be made an additional deposit on the first days of January and July of each year, in a sum sufficient to cover the excess liabilities accrued during the last preceding six months; and provided further, that no part of such original deposit of twenty-five thousand dollars, shall be derived from or consist of any funds contributed by the subscribers to,or the holder of, any such contracts or agreements."

In the case of State v. Meyer Tailoring Co., 25 S.W. (2d) 98, l. c. 100, an action was brought to enjoin the Meyer Tailoring Company of the City of St. Louis from transacting the business of issuing and selling contracts or certificates entitling holders to suits of clothes after making thirty (30) weekly payments, but providing for their maturity before such time by a lottery.

The Court, in that case said:

> "The averments of the petition based upon the facts as to the formation and operation of the respondent * * * *, shows it to be if it had complied with the law of its creation and its business transaction had not partaken of the character of a lottery, a co-operative company, as that class of organizations are designated and described in chapter 90, R. S. 1919." (Now Chapter 32, Article 9, R. S. Mo. 1929.) * * * *"

The above case holds that, aside from the lottery feature, if the organization had complied with the provisions under which it was created (now Article 9, Chapter 32, R. S. Mo. 1929), it would have been a co-operative company.

It is not the purpose or intention of the Attorney General's Office, (nor are we asked), to determine whether the "State Co-operative Club", a corporation, is operating an oil company within the provisions and limitations of its charter. We are not informed of sufficient facts in the premises to venture an opinion as to their conduct as a co-operative corporation, operating under the provisions of Section 4986, supra. We are only answering your questions and determining whether or not a co-operative organization can be organized under the laws of Missouri for the sole purpose of operating a co-operative oil company.

CONCLUSION.

It is the opinion of this office that a co-operative corporation cannot possibly be organized under the provisions of Section 12748 and 12766, supra, where the sole purpose is to sell oil. The law providing for agricultural co-operatives was not intended to promote oil co-operatives in Missouri, where the sale of oil is the sole purpose of this co-operative corporation.

It is the further opinion of this office that a co-operative corporation can be organized under the laws of Missouri, for the sole purpose of selling oil, under the provisions of Section 4986, supra, which provides for a $25,000.00 deposit of securities with the State Treasurer, protecting co-operative subscribers and holders of co-operation contracts, along with additional statutory security to the co-operative subscribers. Our Supreme Court, as shown by the Meyer Tayloring case, supra, has held that a company may organize for the sole purpose of selling certificates and contracts entitling the holders to suits of clothes, after complying with the provisions of Section 4986, supra and since suits of clothes can be marketed co-operatively under the above Section, there is nothing in said Section to prevent the marketing of oil, where the co-operative oil company is incorporated under its provisions.

Respectfully submitted

APPROVED:

WM. ORR SAWYERS
Assistant Attorney General.

ROY McKITTRICK
Attorney General.