

STATUTES:

COOPERATIVE COMPANIES: Section 14417 R. S. Missouri, 1939, is a special statutes in character, and having been enacted subsequently will prevail over Section 8318 R. S. Mo., '39.

January 24, 1942

Hon. Phil H. Cook  
Prosecuting Attorney  
Lafayette County  
Lexington, Missouri



Dear Sir:

We are in receipt of your request for an official opinion, which request is dated January 19, 1942, and reads as follows:

"Several cooperative companies in our county operating under the provisions of Section 14417 of the Revised Statutes of 1939 are making certain rebates or dividends to customers based on the amount of goods purchased during the preceding year.

"Several persons in competitive business with these cooperative companies are complaining to me that by giving these rebates or dividends, that the cooperative companies are violating the provisions of Section 8318 of the 1939 Revised Statutes of Mo. Will you please give me an opinion as to whether or not cooperative companies giving rebates or dividends based on the amount of purchases are violating the provisions of Section 8318 of the Revised Statutes of 1939."

Hon. Phil H. Cook

(2) January 24, 1942

At the outset we assume the opinion request refers to cooperative companies organized under Article 28, Chapter 102, R. S. Missouri, 1939. From a reading of the request, we note the following statement:

"are making certain rebates or dividends to customers based on the amount of goods purchased during the preceding year."

In this connection we quote a portion of Section 14417, R. S. Missouri, 1939, as follows:

"The shareholders of such an association at any general or special meeting, shall apportion the earnings by first setting aside not less than ten (10%) per cent of the net profits for a reserve fund until an amount has accumulated in the said reserve fund equal to fifty (50%) per cent of the paid-up capital stock, and then shall be declared a dividend upon paid-up capital stock, to be determined by said shareholders, which dividends shall not exceed ten (10%) per cent and the remainder of the said net profits shall then be divided by a uniform dividend, determined and based upon the amount of sale or purchases or upon both the sales and purchases of those who have done business with such association. In case the association is both a selling and productive company, such last mentioned dividends may be determined by and based upon both raw material delivered and goods purchased by patrons. The net profits of said association shall be distributed at

least once in each period of twelve (12) months at such time and in such manner as may be provided by its by-laws. \* \* \* "

It will be noted from reading the above quoted portions of the section, that it is provided:

" \* \* and the remainder of the said net profits shall then be divided by a uniform dividend, determined and based upon the amount of sales or purchases or upon both the sales and purchases of those who have done business with such association. \* \* \* "

The opinion request does not set forth any facts which would show specifically how the cooperative companies are making rebates or giving dividends contrary to the provision of the statute above quoted. Therefore, we are forced to confine this opinion to the interpretation and construction to be placed upon Section 14417, supra, as it may or may not apply to Section 8318 R. S. Missouri, 1939.

In tracing the history of Section 14417, supra, we find that Article 28, of which Section 14417, supra, is a part, was enacted by the legislature in 1919. (L. 1919, p. 116). Later, in 1929, the legislature repealed Section 10257, Chapter 90, Article 10, R. S. Missouri, 1919, and enacted in lieu thereof two new sections to be known as Section 10250 and 10257. The latter section is now what is known as Section 14417. (L. 1929, p. 334). Now turning to the history of Section 8318 we find that this section was in substance on the statute books prior to 1913. However, the legislature in 1913, repealed Section 10314, Article 2, Chapter 98, Laws of 1909, and re-enacted a new section designated as 10314 which section is now Section 8318, and which provides as follows:

"Any person, firm, company, association or corporation, foreign or domestic, doing business in the state of Missouri and engaged in the production, manufacture, purchase, sale or distribution of any commodity or article of commerce in general use, that intentionally, for the purpose of destroying the competition of any regular, established dealer of such commodity, or to prevent the competition of any person, who in good faith intends and attempts to become such dealer, shall discriminate between different sections, localities, communities, cities or towns of this state, by purchasing such commodity or article at a higher price or rate in one section, locality, community, city or town, than is paid for the same commodity or article by the said person, firm, company, association or corporation, in another section, locality, community, city or town; or by selling such commodity or article in one section, locality, community, city or town at a lower price or rate than such commodity or article is sold for by said person, firm, company, association or corporation in another section, locality, community, city or town, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of purchase to the point of manufacture or storage, or from the point of production, manufacture or storage to the place of sale or distribution, or by giving or paying or promising to give or pay a secret or private rebate or bonus in connection with the purchase, sale or distribution of any commodity or article or commerce, shall be deemed guilty of unfair discrimination which is hereby prohibited and **declared** unlawful."

From the history of these sections we see that Section 14417, supra, is a later section than Section 8318, supra. It will be further observed that Article 28, Chapter 102, R. S. Missouri, 1939, of which Section 14417, supra, is a part, was enacted for a specific purpose, that is, to provide a legislative scheme for the organization and operation of cooperative companies.

In the case of State v. Gehner, 280 S. W. 416, l.c. 418, the court said:

"Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to or qualification of the prior general one, and, where the general act is later, the special act will be construed as remaining an exception to its terms unless it is repealed in express words or by necessary implication." 36 Cyc. p. 1151.

"The foregoing rule has frequently received the approval of this court. It is succinctly stated in Ackerman v. Green, 100 S. W. 34, 201 Mo. loc. cit. 244, in these words:

"Where a statute in relation to special proceedings is complete in itself and covers the entire subject, it is exclusive, and the proceedings under it are governed solely by its provision" - citing cases.  
\* \* \*

See State v. Brown, 68 S. W. (2d) 55, l. c. 59.

For a collection of cases holding the same as the portions of the cases we have set forth see State v. Max Richman, 148 S. W. (2d) 796, l. c. pars. 2,3.

From the reading of the cases, supra, and from the history of each of the sections, we must conclude that Section 14417, supra, is a special statute and having been passed at a later date than Section 8318, supra, would have precedence over Section 8318 and the cooperative companies complying with the conditions of Section 14417 would not be amenable to Section 8318, supra.

We also wish to call attention to a portion of the opinion in the case of State v. Brown, 68 S. W. (2d) 55, l. c. pars. 9-12, where the court said:

"Nor will it do to say, as respondent suggests, that section 5613 'is discriminatory and does violence to the policy of equality.' In the absence of constitutional inhibition, and none has been called to our attention, the General Assembly has power to classify corporations and deal with them accordingly, as long as such classification is reasonable and there is no discrimination between those falling within the same class. No such objections are here urged, and absent such, a law is neither local nor special within the meaning of the inhibitions imposed by section 53, article 4, of the Constitution of Missouri. City of Springfield v. Smith, 322 Mo. 1129, 19 S. W. (2d) 1. In respects not properly challenged, the constitutionality of a statute is presumed. The public policy of a state must be determined by its Constitution, laws, and judicial decisions. In re Rahn, 316 Mo. 492, 500, 291 S. W. (2d) 120, 51 A. L. R. 877. \* \* \* "

On the authority of the statement of the court, supra, we must conclude that Section 14417, supra, is constitutional and further that it is not discriminatory.

Hon. Phil H. Cook

(7) January 24, 1942

CONCLUSION

We are of the opinion that any cooperative company under the provisions of Article 28, Chapter 102, R. S. Missouri, 1939, is in no wise amenable to Section 8318, R. S. Missouri, 1939, if the provisions of Article 18, supra, are followed by the cooperative company.

Respectfully submitted

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

---

VANE C. THURLO  
(Acting) Attorney General

BRC:RW