

AGRICULTURE: Moniteau County Agricultural and Mechanical Society properly incorporated and eligible for State aid.

9/17
May 11, 1940.



Honorable Jewell Mayes
Commissioner of Agriculture
Jefferson City, Missouri

Dear Mr. Mayes:

We wish to acknowledge receipt of your letter under date of April 18th, together with transcript of record. Your letter reads as follows:

"The present officers of the Moniteau County Fair, are desirous of knowing as to whether they are legally authorized whereby they would be eligible for "State Aid" under the State Aid Law to County Fairs and Agricultural Exhibitions, as found in Agricultural and Mechanical Society Article in Chapter 87 of Revised Statutes, 1929, as unamended.

"The officers of the Moniteau County Fair have submitted to me the enclosed transcript of the record in the Moniteau County Court, California, Missouri, as made on Tuesday, August 9, 1859.

"I am advised by the Fair officers that this organization has been alive and a going concern since 1859. There was a temporary cessation almost wholly during three years of the Civil War, but there was no purposed suspension of the activities of the Fair at any time since it was organized, and a very good fair was held in 1939.

"May I have your opinion upon this inquiry, thanking you in advance?"

May 11, 1940.

The following is the transcript of the record:

"State of Missouri) In the Moniteau County
) Court August Term 1859
County of Moniteau) Tuesday, August 9th 1859.

"Now at this day comes J. D. Adams and presents a petition signed by at least fifty freeholders of Moniteau County setting forth the facts that they desire to organize and be incorporated as a body politic for the purpose of promoting improvements in Agriculture, Manufacturing and the raising of Stock. And the Court being satisfied that such petitioners are freeholders of said Moniteau County in the State of Missouri, The Court doth therefore Order and Declare said petitioners incorporated and a body politic and corporate by the name and style of the Moniteau County Agricultural and Mechanical Society and by that name they and their successors shall be known in law regulating such Societies and corporations according to an act entitled an Act to authorize and encourage the establishment of Agricultural Societies in the several counties in this State and Regulate the same, approved November 23d 1855.

"State of Missouri)
) SS.
County of Moniteau)

"I, Wm. G. Howard, Clerk of the County Court within and for the County aforesaid do hereby certify the above and foregoing to be a true copy of an order made by said Court on the 9th day of August 1859 as fully as the same appears of record in my office.

"In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at office this 10th day of August 1859.

May 11, 1940.

"(L. S.)

Wm. G. Howard, Clerk

By W. C. Hall D. C.

"Filed August

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By W. C. Hall D. C.

"STATE OF MISSOURI)
) SS.
COUNTY OF MONITEAU)

"I, CHAS. C. TREIBER, Clerk of the Circuit Court and Ex-Officio Recorder of Deeds within and for the County and State aforesaid, do hereby certify that the above and foregoing is a full, true and correct copy of the record of the Articles of Incorporation of the MONITEAU COUNTY AGRICULTURAL AND MECHANICAL SOCIETY as fully as the same appears of record in my office in Deed Record Book No. G at Page 79.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in CALIFORNIA, MISSOURI this 7th day of NOVEMBER A. D. 1939.

Chas. C. Treiber
Clerk Circuit Court and Recorder
Moniteau County, Missouri.

(SEAL)

By R. H. Mueller Deputy."

Section 12484 of Article 8, Chapter 87, R. S. Mo. 1929, provides how Agricultural and Mechanical Societies may be organized:

"Whenever fifty or more freeholders within this state shall present a petition to the county court of the county in which they or a majority of them reside, stating therein that

May 11, 1940.

they desire to organize and be incorporated for the purpose of promoting improvements in agriculture, manufacture and the raising of stock, and setting forth in said petition the name and location to be adopted by said proposed incorporation, said name to be 'The (name of county) agricultural and mechanical society of (name of town or city where the office of said society is to be located,' and the court shall be satisfied that such persons are freeholders of this state, the court shall, by order, declare the petitioners incorporated for the purpose specified in this section, and thenceforth the petitioners shall be a body politic and corporate by the name and style adopted as aforesaid, and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, plead and be impleaded, defend and be defended, in all courts and in all actions, pleas and matters whatsoever, and shall have power to purchase, hold, lease, rent and receive any quantity of land not exceeding one hundred acres, with such buildings and improvements as may be placed thereon, and any other property, not exceeding in value one hundred thousand dollars; and may, by vote, determine that thereafter the members of said society shall be composed of such persons as shall subscribe at least one share of the capital stock thereof, in shares not exceeding twenty-five dollars each, said shares to be personal property and transferable by agreement; but no transfer shall be binding on the society until reported in writing and approved by the board of directors. The amount of such capital stock shall, from time to time, be fixed by the stockholders or board of directors, provided the same shall at no time exceed one hundred thousand dollars, and said board of directors may convey, lease sell and dispose of the property of the society, or any part thereof, for the benefit of the society,

May 11, 1940.

and have a common seal, and break and alter the same at pleasure."

The transcript of record reveals that the Moniteau County Agricultural and Mechanical Society was ordered incorporated by the Moniteau County Court on August 9, 1859. The society was organized under an act approved November 23, 1855. Section 1 of said Act (R. S. Mo. 1855, Vol. 1 Page 182) is in substantially the same language as Section 12484, supra, with the following exceptions.

In 1855 the societies could hold land not exceeding thirty acres and have property in value not exceeding ten thousand dollars. Under the present law they may hold land not exceeding one hundred acres and have property in value not exceeding one hundred thousand dollars. A further exception is that under the present law the society "may" by vote determine that thereafter the members of the society shall be composed of such persons as shall subscribe at least one share of the capital stock.

It is evident then that there is nothing in the present law which would make the original incorporation ineffective.

Section 12495 R. S. Mo. 1929, provides that a duly authenticated copy of the order of the county court shall be filed and recorded in the office of the Recorder of Deeds:

"A duly authenticated copy of the order of the county court, provided for in section 12484, shall be filed and recorded in such manner as conveyances of land are by law directed to be recorded in the office of the recorder of deeds of such county within three months after such order shall be made. No society organized by virtue of this article shall be authorized to do business as such society until such duly authenticated copy shall have been filed and recorded in the manner herein set out."

May 11, 1940.

This was also the requirement made by Section 12, R. S. Mo. 1855, Vol. 1, Page 185, with the exception that the latter did not contain the further provision that the society was not authorized to do business until the order was recorded. The transcript of record reveals that said order was filed and recorded in the office of Recorder of Deeds.

Under the original statutory authority (Section 1 R. S. Mo. 1855, supra) and as the same exists presently (Section 12484 R. S. Mo. 1929, supra), the society is given perpetual succession. You state that you are advised there was a temporary cessation of the corporation for almost three years, but that there has been no suspension of activities at any time since it was organized in 1859.

Fletcher Cyclopedia of Corporations Vol. 16, Section 8068, Page 849, declares: "that mere temporary suspension of business by a corporation * * * is no ground for the forfeiture of its franchise where there is no injury to the public * * * " and Section 8062, Page 843, declares that: "it must be intentional and wilful and be something more than a single omission to exercise corporate functions. Where non-user is the ground of forfeiture, it is said that it should be 'total and clear'"; (See also State v. Societe Republicaine 9 Mo. Appeal 114, 120; State v. Delmar Jockey Club 200 Mo. 34).

Irrespective of whether there were grounds for forfeiture by reason of non-user there is presently no grounds for forfeiture. Fletcher declares in Vol. 16, Section 8064, Page 845 that: "It is held that abandonment of corporate powers is no ground for forfeiture where such powers have long been resumed."

Section 12503 R. S. Mo. 1929, Page 217, provides for the granting of state aid to incorporated organizations conducting county wide agricultural exhibitions:

"It is further provided that for the fostering and developing of agriculture in such counties as do not have within their borders a

Honorable Jewell Mayes. - 7 -

May 11, 1940.

county or district fair, the said board of agriculture may pay to incorporated organizations conducting county-wide agriculture exhibitions, thirty per cent. of premiums on grains paid out at such exhibitions: Provided, that such agricultural exhibitions are conducted by an organization showing by its officers and board to be of county-wide character, and offering premiums to the citizens of the entire county. The payments specified under this section shall not be subject to the provisions set forth in section 12502 for an additional ten per cent. payment."

From the foregoing we are of the opinion that the Moniteau Agricultural and Mechanical Society is properly incorporated under Article 8, Page 87, R. S. Mo. 1929, and eligible for state aid within the provisions of said article.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General.

APPROVED BY:

COVELL R. HEWITT
(Acting) Attorney General.

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