



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

Gerald C. Mann  
~~WILLIAMSON~~  
ATTORNEY GENERAL

Honorable Sidney Latham  
Secretary of State  
Austin, Texas

Dear Sir:

Opinion No. 0-5508  
Re: Adoption of Cooperative  
Marketing Act (Chapter 8,  
Title 93, Revised Civil  
Statutes) by corporations  
organized under Article  
1302, Subdivision 81; and  
payment of franchise taxes.

In your letter of November 8, 1943, regarding the above captioned matter, you ask the following questions:

1. "Should this office under the provisions of Article 5760 approve and file amendments to charters of corporations organized under the provisions of Title 32 of the Revised Civil Statutes changing the corporate structure of said corporations to come under the provisions of Chapter 8, Title 93 of the Revised Civil Statutes?

2. "If your answer to the first question is in the affirmative, should such a corporation after coming under the provisions of Chapter 8, Title 93 continue to pay franchise taxes to this department?"

You handed us in connection therewith the original charter of the Booker Equity Union Exchange, a corporation created May 17, 1920, under the provisions of Subdivision 81, of Article 1302, Vernon's Annotated Civil Statutes, together with two (2) amendments, filed September 10, 1940, and July 7, 1941.

Both amendments were approved and filed with the Secretary of State. The 1940 amendment adopted the provisions of the Cooperative Marketing Act (Chapter 8, Title 93, Revised Civil Statutes), and the 1941 amendment increased the capital stock of the association from \$31,238.00 to \$40,000.00.

The pertinent statutes are:

"To construct or purchase, or purchase and maintain mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities by grain elevator and public warehouse companies; the loan of money by such elevator and public warehouse companies; and to act as general commercial brokers and as custom brokers in the United States and foreign countries." (Subdivision 81, Article 1302, Revised Civil Statutes)

"An association may be organized to engage in any activity in connection with the production, cultivation, and care of citrus groves or the marketing or selling of agricultural products and citrus fruits produced by and marketed for its members, or in the harvesting, preserving, drying, processing, canning, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. Provided, however, any such activities may extend to non-members and to the production, cultivation, and care of lands owned or cultivated by them and their products limited by Article 5738 as heretofore amended." (Article 5740, Cooperative Marketing Act).

"Each association formed under this Act must prepare and file Articles of Incorporation, setting forth: (a) The name of the association. (b) The purposes for which it is formed. (c) The Place where its principal business will be transacted. (d) The term for which it is to exist, not exceeding fifty (50) years. (e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors. (f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the Articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have

to power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the Articles of Incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members. (g) If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the Articles of Incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preferences and privileges granted to each. The Articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this State; and when so filed the said Articles of Incorporation, or certified copies thereof, shall be received in all courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. . . . " (Article 5744, Co-operative Marketing Act)

"Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Secretary of State, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this chapter. Articles of Incorporation shall be filed as required in the eighth article of this chapter, except that they shall be signed by the members of the

board of directors. The filing fee shall be the same as for filing an amendment to Articles of Incorporation." (Article 5760, Cooperative Marketing Act)

Article 5760, last quoted above, provides that an Association may adopt the provisions of the Cooperative Marketing Act by: (1) Its Directors filing a sworn statement with the Secretary of State to the effect that by a majority vote of its stockholders, it has decided to accept the benefits and be bound by the provisions of Chapter 8, of Title 93, of the Revised Civil Statutes, as amended; (2) Filing articles of incorporation as required by Article 5744, Vernon's Annotated Civil Statutes, signed by the members of the Board of Directors.

An examination of the instruments submitted discloses that the Booker Equity Union Exchange has complied with these requirements, and that the papers they submitted are in order except that when it was decided to come under the provisions of Chapter 8, of Title 93, it filed what was denominated an amendment of its charter rather than new articles of incorporation.

However, the amendment filed in your office September 10, 1940, contains all that is required by Article 5744 for articles of incorporation, and is signed and acknowledged by the directors. It was accompanied by the statement required by Article 5760.

Your first question is therefore answered in the affirmative; and this will apply to other corporations desiring to change their corporate structure to come under the provisions of Chapter 8 of Title 93, when such an amendment contains all the information required by Articles 5744 and 5760, and is executed as there prescribed.

Article 5764, Vernon's Annotated Civil Statutes, is pertinent to your second question, and reads as follows:

"Each association organized hereunder shall pay to the Commissioner an annual license fee of ten dollars but shall be exempt from all franchise or license taxes. For filing articles of incorporation, an association organized hereunder shall pay ten dollars, and for filing an amendment thereto, two dollars and fifty cents."

You are advised that, in our opinion, when a corporation changes its corporate structure in the manner provided in Article 5760, supra, it is entitled to the benefits of Article 5764 just as a corporation originally organized under the provisions of the Cooperative Marketing

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Act, and is exempt from the payment of franchise taxes.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

James D. Smullen  
Assistant

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