



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN₁

GROVER SELLERS
ATTORNEY GENERAL

Honorable Claude Isbell
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. 0-6375

Re: Under the given facts does the Secretary of State have the power and authority, and is it his duty, to approve and file a charter for an association to be organized under the Co-operative Marketing Act?

We duly received your request for an opinion on the above matter, said request reading as follows:

"The Farmers Supply Company of Hartley, Texas, is an agricultural co-operative marketing association organized under the provisions of Chapter 8 of Title 93 of the Texas Revised Civil Statutes.

"The purpose clause as stated in its charter is as follows:

"The purpose for which this corporation is organized is to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, processing, packing, 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 herein specified."

"This corporation shall have and enjoy all of the powers granted by the Cooperative Marketing Act of Texas, as amended, or which may hereafter be amended."

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"On March 17, 1945, the Farmers Supply Company of Hartley, Texas, acting through their attorneys, Underwood, Johnson, Dooley and Wilson, of Amarillo, Texas, filed with this office a proposed amendment to the charter of the said co-operative which in part sought to amend the purpose clause of the said charter so that it would hereafter be as follows:

"The purpose for which the said association is organized is to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, processing, packing, storing, handling, shipping, or utilization 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 said association may further conduct a public warehousing business, including warehousing in compliance with the applicable statutes, state and federal, relative to the conducting of state or federally bonded warehouses. This association shall have and enjoy all of the powers granted by the Co-operative Marketing Act of Texas, as amended, or which may hereafter be amended."

"Emphasis, which contains the matter added to the purpose clause as it now exists, is mine.

"On March 20, 1945, the office declined to file this amendment due to the fact that we could not find any statutory provision which would, in our opinion, authorize a Co-operative Marketing Association to engage in the business of operating a public, state or federally bonded warehouse.

"On April 17th, the above-mentioned law firm, acting by and through R. A. Wilson, wrote us a letter to the effect that our action in declining to file the proposed amendment was contrary to the requirements of the State Department of Agriculture, and to the rulings of prior Heads of the Charter Division of this office.

"Will you please, therefore, favor us with your opinion in regard to the following questions:

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"Does the Secretary of State have the power and authority, and is it his duty, to approve and file a charter for an association to be organized under the Co-operative Marketing Act, which is in all things regular on its face, other than that it has included in its purpose clause the operating and maintaining of a public warehousing business?

"Would your answer to the above question be different if the question involved an amendment to an existing charter rather than a new charter?"

As to the rules governing the purposes for which a corporation may be chartered, there is laid down in 10 Tex. Jur., Sec. 32, pp. 624-5, the following:

"In connection with the statement of the purposes of the corporation, the principal proposition is that the scope of the purposes enumerated in the statutes must not be exceeded. The general authority to incorporate a corporation organized for 'mutual profit or benefit' having been repealed, it is considered to be the policy of the Texas law to limit the rights of incorporation to the specific purposes authorized by statute. . ."

In the case of Smith et al vs. Wortham, Secretary of State, 157 S. W. 740, the Supreme Court had under consideration a case where it had been asked to require the Secretary of State to approve the application for a corporate charter of the Dallas Automobile Club Building Association, and in which it laid down the following rules:

"The authority of this court to compel by mandamus the performance by the Secretary of State of an official act exists only in those instances where he is under a clear legal duty to perform the particular act. Judicial revision of his action in rejecting a charter of a corporation tendered for approval on account of its purpose clause is not justified unless the purpose named is clearly authorized by law."

The Farmers Supply Company of Hartley, Texas, was originally chartered under Chapter 8, Title 93 of Vernon's Annotated Civil Statutes, Article 5763 of which is in part as follows:

"The provisions of the general corporation laws of this State, and all powers and rights thereunder shall apply to associations organized hereunder except when in conflict with the provisions of this chapter. . ."

10 Tex. Jur., Sec. 32, p. 625, lays down a further rule as follows:

". . . A further rule is that the filing of a charter stating purposes embraced in more than one subdivision of Article 1302 is unauthorized. . . . Furthermore, one subdivision may not be construed to authorize two independent businesses."

In the case of Ramsey et al vs. Tod, Secretary of State, 69 S. W. 133, the Supreme Court was considering a petition for a writ of mandamus to compel the Secretary of State to file a charter under certain statutes therein mentioned, and in refusing such petition it was held as follows:

"Considering these provisions together, we are of the opinion that it was the intention of the legislature to authorize a corporation to be formed for any one or more of the purposes as specified in any one of the subdivisions, and not for two or more purposes as designated in two or more subdivisions. Section 4 throws no light upon the question. As to this matter, language could hardly have been employed which would have been more indefinite. The words 'private corporations may be created * * * for the purposes * * * mentioned in the following sections,' may mean literally that a corporation may be formed for one of the purposes only, or for any one or more of the purposes, or for all of the purposes mentioned in the section. So the language in section 5, 'the purposes for which corporations * * * may be formed are,' is equally indeterminate. But when we come to consider the requirements as to the contents of the charter as prescribed in section 6, the legislative intent becomes more apparent. One of these is that the charter must state 'the purpose' for which the corporation 'is formed'. For the reason that if it had been intended that a corporation might be created for two or more of the purposes specified in the preceding section, it would have been appropriate to have said 'the purpose or purposes for which it is formed', the use of the word 'purpose' in the singular number tends strongly to show that it was the intention of the legislature to

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authorize the creation of a corporation for only one purpose, or for two or more of the purposes mentioned in one subdivision. It may be true that the use of the singular number may not be conclusive of the question, and that, if there were other provisions in the act which, either by express declaration or clear implication, indicate that it was intended to authorize an incorporation for two or more of the designated purposes, whether in the same subdivision or not, we should so hold. But no provisions in the act which show satisfactorily such intention have been pointed out, nor have we found any. On the contrary, the structure of section 5 tends to show that it was only one purpose that was to be mentioned in the charter. If such was not the intention, why did the legislature specify each purpose in a separate subdivision of the section, and number them from 1 to 27, successively? It is at least suggestive that two purposes, when not embraced in the same subdivision, were not to be conjoined in a charter, but that they were to be severed, and one alone adopted.

"Further, in this connection it is to be noted that we are not dealing with a hastily prepared legislative enactment. Unlike many others, the statute under construction is comprehensive in its scope, elaborate in its details, and bears evidence upon its face that it was thoroughly considered and carefully prepared by a person or persons learned in the law. In such a statute the designation of the purposes for which corporations were authorized to be created in numbered subdivisions, together with the provisions that the charter should set forth 'the purpose for which it is formed', ought, in the absence of provisions indicating a different intent, to be deemed to show that the legislature had in mind the creation of a corporation for one of the purpose or purposes specified in one subdivision only."

In the case of Johnston et al vs. Townsend, Secretary of State, 124 S. W. 417, the Supreme Court was considering an application for a mandamus to compel the Secretary of State to file a charter of incorporation, which he refused to do on the ground that it was for the formation of a corporation for two purposes, which, he contended, could not be combined in one charter. The contention was also made that the court had held in case of Ramsey vs. Tod, supra, that charters are authorized without limitation for all the purposes mentioned in any one subdivision of the statute. In refusing said application, the court held as follows:

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"A charter must specify the purpose for which the corporation is to be created. This should be done with sufficient clearness to enable the Secretary of State to see that the purpose specified is one provided for by the statute, and to define with some certainty the scope of the business or undertaking to be pursued. The charter tendered in this case is so general and indefinite in its language that while it might apply to one business, such as we have mentioned, consisting of both manufacturing and mining, with the purchase and sale of goods, etc., used for it, it might also be taken to authorize the transaction of two businesses, one of manufacturing and another of mining, with the further power of purchase and sale incident to each. And it appears to be the purpose of the relators to use the charter for the carrying on of what we regard as two distinct businesses. We may look to this as illustrative of the capacities for use of that which it is sought to have the respondent file, although we do not think that questions as what may be done under a charter ordinarily arise when it is proposed to have one filed. It is proper and important to see that the purpose of a charter is so expressed as to carry out the intention of the Legislature in making that requirement; for it is by a compliance with it that the public, as well as those specially interested in corporations, are to be protected against the assumption of powers not granted. It appears from the petition that the relators who are also the proposed incorporators have heretofore acted as partners in mining for oil, gas, and water, and have manufactured their own tools and equipment and devices used in that business, and have invented and received patents on some which were new. They have been able to manufacture more of these than they have needed in doing their own work, and have been engaged in selling them, and the manufacturing business which they wish to incorporate is that of making these tools, devices, etc., for sale to others. Such manufacturing has heretofore been a part of the business which, as individuals, they had a right to conduct, but it by no means follows that it with all else that is proposed for the corporation is only one business of mining and manufacturing such as one corporation may follow. It seems plain that the business of manufacturing for sale, tools, etc., for mining

is as distinct from the business of mining as the business of manufacturing for sale farming implements would be from farming. In order to hold that the statute allows the incorporating for two such purposes, we should have to hold that it authorizes the incorporation of one company for distinct businesses of manufacturing and mining, which as we have already said, is not true. And, as the charter offered can be interpreted as meaning and is intended to mean that it authorizes the pursuit of both businesses, we think the respondent had the right under the law to refuse to file it until the doubt as to its scope should be removed by a more specific statement of the purpose.

"As we have before indicated, relators reply on some expressions in the opinion in Ramsey v. Tod, for their contention that charters are authorized without limitation for all the purposes mentioned in any one subdivision of the statute. What was really held was that the subdivision of the statute showed the legislative intent that there should be no uniting of purposes mentioned in different subdivisions, although related to each other, and only those mentioned in the same subdivision were capable of being joined in one charter. It certainly was not meant that all of those mentioned in any subdivision could be united in every case, regardless of the way in which they might be related to or connected with each other. It will be seen that the effort in that case was to incorporate businesses which would have had a close and natural connection with each other, viz.: (1) 'The purchase and sale of goods, wares and merchandise, and agricultural and farm products'; and (2) 'the accumulation and loan of money in carrying out said purpose'. It thus appears that the latter purpose would have been wholly dependent on the results of the first. The holding was that because of the fact that these purposes were treated by the statute as separate they could not be made one as sought, notwithstanding the dependence of one upon the other. With this in mind, it is easy to understand what was said as to those purposes mentioned together in the subdivisions. They were treated by the statute itself as if they could be united and hence they may be; but this does not mean that they must be held in every instance to constitute 'a business' the transaction of which is 'the purpose' of the incorporation, although wholly

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distinct from and unrelated to each other. The court in Ramsey v. Tod had no occasion to determine the conditions essential to incorporating when only those things mentioned in a single subdivision were in question. We have endeavored to show how mining and manufacturing may be combined under subdivision 14 and restrict our decision to that."

Under the above well-defined rules, it is our opinion that authority for the filing of the proposed amendment to the charter of the Farmers Supply Company of Hartley, Texas, must be found under Chapter 8, Title 93, V. A. C. S., or it will have to be refused.

The declared policy of the State in regard to co-operative marketing associations authorized by Chapter 8, Title 93, is set forth in Article 5737 in the following language:

"In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operation and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the market problems of agricultural products, this law is passed."

Article 5740 of said statute, as amended, Acts 1943, 48th Leg., p. 601, Chap. 346, which sets forth the purposes for which such an association may be organized, reads as follows:

"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."

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Article 5738 of said statutes, which limits the provisions of Article 5740, is as follows:

"(a) The term 'agricultural products' shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee, and any farm and ranch products; (b) the term 'member' shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock; (c) the term 'association' means any corporation organized under this Act or any association organized under the co-operative marketing acts of any other State of the United States; provided, such foreign association is composed of persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers, acting together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing in interstate and foreign commerce, such products of persons, so engaged; provided, further, that such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

"(1) That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or

"(2) That the association does not pay dividends on stock or membership capital in excess of eight per centum per annum, and in any case to the following:

"(3) That any association shall be permitted to deal in the products of non-members to an amount not greater in value than such as are handled by it for its members; and (d) the term 'person' shall include individuals, firms, partnerships, corporations and associations. Associations organized hereunder shall be deemed non-profit, inasmuch as they are organized not to make profits for themselves, as such, or for their members, as such, but only for their members as producers. This Act shall be referred to as the 'Co-operative Marketing Act.'"

The powers of associations incorporated under this Act are set forth in Article 5742 as follows:

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"Each association incorporated under this Chapter shall have the following powers:

"(a) To engage in any activity in connection with the production, cultivation and care of citrus groves and the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utilization of any agricultural products produced or delivered to it by its members, or the production, manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this Article.

"(b) To borrow money and make advances to members.

"(c) To act as the agent or representative of any member or members in any of the above-mentioned activities.

"(d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association; including the power to subscribe, pay for and own the capital stock of Banks for Cooperatives organized under the 'Farm Credit Act of 1933' passed by the Congress of the United States and approved June 16, 1933.

"(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

"(f) To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

"(g) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient

for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this state to ordinary corporations except such as are inconsistent with the express provisions of this Act; and to do any such thing anywhere.

"(h) To extend its activities to the products and supplies of non-members to an amount not greater in value than such as are handled by it for its members."

Article 5664 of said statutes defines "warehouseman" as a person lawfully engaged in the business of storing goods for profit.

Article 5568 sets forth the conditions under which any person, firm, company, or corporation shall be deemed and taken to be public warehousemen, as follows:

". . .

"Any person, firm, company, or corporation who shall receive cotton, wheat, rye, oats, rice, or any kind of produce, wares, merchandise, or any personal property in store for hire, shall be deemed and taken to be public warehousemen."

Chapter 3, Title 93, authorizes the formation of a co-operative association (Art. 5578), one of the powers of which is that of a warehouseman, (Art. 5579) and Chapter 4 of said Title authorizes the issuance of warehouse receipts, Art. 5561 thereof setting forth who may become a public warehouseman and the requirements therefor; but, under the rules above laid down, the Farmers Supply Company of Hartley, Texas, is not authorized to take advantage of such provisions and to amend its charter thereunder, since it was organized and has been operating under Chapter 8 of said Title, which is a different law. There being no provision in Chapter 8, Title 93, authorizing the issuance of a charter containing the purpose clause set forth in said proposed amendment, viz: "provided said association may further conduct a public warehousing business, including warehousing in compliance with the applicable statutes, state and federal, relative to the

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conducting of state or federally bonded warehouses," it is our opinion that said proposed amendment should be refused. This would be true without regard to whether the question involved an amendment to an existing charter, or a new charter.

Trusting this satisfactorily answers your inquiry, we remain,

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Jas. W. Bassett*
Jas. W. Bassett
Assistant

JWB/JCP

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SECRETARY

