

-OPERATIVE: Co-operative organized under laws of
CORPORATIONS: District of Columbia may qualify to do
business in Missouri.

May 23, 1949

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Hon. Walter H. Toberman
Secretary of State
Jefferson City, Missouri

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Attention: Mr. W. Randall Smart
Corporation Supervisor

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"We are in receipt of a letter dated March 11, 1949, copy of which is attached hereto, from Jerome A. Gross, Attorney at Law, St. Louis, Missouri, relative to the qualifying of the Cooperative Services of St. Louis, Inc. Said letter is in answer to our request that this corporation furnish us a more detailed report as to the kind of co-operative and business purposes.

"The cooperative association, incorporated in the District of Columbia desires to qualify in this state as a nonprofit co-operative with capital stock, having a par value of \$25.00 per share. We find no provision in our laws whereby we can permit the qualifying of a foreign nonprofit cooperative stock company. Section 14355 R. S. of Mo., 1939, provides for the qualifying of any association organized under generally similar laws of another state. This section is in the law covering nonprofit cooperative associations. We note all citations mentioned in the enclosed letter refer to sections in the stock cooperative laws and we do not believe same are applicable here.

"The questions in which we are concerned are:

First, are the Missouri laws and the laws of the District of Columbia, under which this association was formed, similar? We think they are not similar to the State of Missouri nonprofit cooperative laws for the following reasons:

Missouri law requires a majority of incorporators to be engaged in the production of agricultural products, (Section 14335 Nonprofit Act), whereas, District of Columbia laws require only 'any five or more natural persons.' (Article II, Section 2.) Missouri law requires business purposes to be specific and limited (Section 14335). The laws of the District of Columbia in this respect are general and permit the operation of any kind of business or services for the primary and mutual benefit of the partners of the association (Article II, Section 3).

Second, our question is this, can this department accept for filing application for a certificate of authority to transact business in this state by a foreign nonprofit stock cooperative organized under the laws of the District of Columbia, laws relating to cooperative associations?

"Although the attorney for the applicant corporation refers extensively to the sections of the Missouri Cooperative Law relative to stock companies, we do not believe Article 28 relating to stock cooperatives is applicable here as the applicant corporation definitely states it is a nonprofit cooperative, and being a nonprofit, could not qualify as a business cooperative or stock corporation. Further, no provision is made in the stock cooperative act (Article 28) to qualify a similar cooperative of another state."

The laws of this state provide for the formation of co-operative corporations and associations. Article 23 of Chapter 102, R. S. Mo. 1939 (Secs. 14334 to 14363), provides for the formation of nonprofit co-operative associations. These are the so-called nonstock co-operatives, such organizations not being authorized to issue shares. Section 14335 prescribes the purposes for which such associations may be formed, as follows:

"Eleven (11) or more persons, a majority of whom are residents of this state, engaged in the production of agricultural products, may form a non-profit co-operative association, without capital stock, under the provisions of this article, for the following purpose or purposes: To engage in any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, grading, 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."

Section 14355 provides:

"Any association heretofore or hereafter organized under generally similar laws of another state shall be allowed to carry on any proper activities, operations and functions in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state and all contracts which could be made by any association incorporated hereunder, made by or with such associations shall be legal and valid and enforceable in this state with all of the remedies set forth in this articles."

Article 28, Chapter 102, R. S. Mo. 1939 (Secs. 14406 to 14424), provides for the formation of co-operative companies. Companies formed under such article are authorized to issue capital stock shares. Section 14406 prescribes the purposes for which such companies may be formed, 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 or 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."

No mention is made in Article 28 concerning the admission to do business in this state of companies organized under similar laws of other states.

The company which seeks to do business in this state is organized under the "District of Columbia Cooperative Association Act." Pub., No. 642, 76th Cong., 3d Session, Ch. 397; 54 Stat. 480. Section 2 of the act authorizes any five or more natural persons or two or more associations to incorporate in the District of Columbia under the act. Section 3 provides:

"An association may be incorporated under this act to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities

goods, or services for the primary and mutual benefit of the patrons of the association (or their patrons, if any) as ultimate consumers." (Underscoring ours.)

Under Section 5 of the act an association organized thereunder may or may not have capital stock, according to the wishes of the incorporators. The general scheme for the operation of a company organized under the District of Columbia Act is on the co-operative plan generally similar to that provided for the operation of co-operative companies organized under the Missouri laws, above referred to.

Under the general principles of comity there would appear to be no objection to a company organized under the District of Columbia laws entering this state and carrying on its business here. The principle is set out in 23 Am. Jur., Foreign Corporations, Section 62, page 72, as follows:

"In the absence of special legislation, a foreign corporation is generally at liberty, under the rule of comity, to enter a state for the purposes of its business on the same footing as a domestic corporation, there to exercise all the powers it is authorized to exercise at home and to do any act, within the scope of its limited powers, which is not prohibited by the local state, subject to no other conditions than that it will conform to the public policy of the state as declared in her general law and the decisions of her courts. * * *"

The rule is further set out in Section 73 of that work, at page 80:

"As a general rule, in the absence of a positive statutory prohibition, the comity by which a corporation is permitted to transact its business in the state is not withdrawn by implication from the omission by the legislature to provide for the formation of similar domestic corporations or to authorize such a business to be carried on by its own corporations. Neither does such a result follow from the fact that the foreign corporation is created in a manner different from that permitted by local law. The rule of comity

does not insist on complete similarity between foreign and domestic corporations in order to admit the former, but takes cognizance of the differences which exist and as a policy of the state admits them, accommodating itself to such as are not obnoxious to its own determined policies.
* * * (Underscoring ours.)

Those principles were applied by the Kansas City Court of Appeals in the case of Mutual Orange Distributors v. Black, et al., 287 S.W. 846.

In view of these principles, there would appear to be no justification for an unnecessarily strict interpretation of Section 14355, R. S. Mo. 1939, above quoted, which provides for the admission to the state of companies organized under the co-operative plan under generally similar laws of other states. Certainly, their doing business on the co-operative plan is not contrary to the policy of this state inasmuch as it is expressly provided for the formation of such companies under its laws. Therefore, such differences as the presence of capital stock shares or the absence thereof would not seem to be particularly significant. If the general scheme of operation is on the co-operative basis, and there is no question that the companies organized under the District of Columbia Act do not operate on the co-operative basis, there would seem to be no reason for precluding their admission to do business in Missouri.

Conclusion.

Therefore, it is the opinion of this department that the laws of Missouri and the laws of the District of Columbia providing for the formation of co-operative corporations are generally similar within the meaning of Section 14355, R. S. Mo. 1939, and that a corporation organized under the District of Columbia Co-operative Act should be permitted, under Section 14355, to qualify and carry on its business in Missouri.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN
Assistant Attorney General

J. E. TAYLOR
Attorney General

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