

2395.

AGRICULTURAL ASSOCIATION, COOPERATIVE — ORGANIZED UNDER SECTIONS 10186-1 TO 10186-30 G. C.—SHARES OF STOCK—MAY PROVIDE FOR CLASSIFIED COMMON AND PREFERRED — PROVISIO, PAYMENT NO DIVIDEND IN EXCESS 8% PER ANNUM—SALE COMMON STOCK, RESTRICTED TO PERSONS WHO PRODUCE AGRICULTURAL PRODUCTS HANDLED BY SAID ASSOCIATION—SECTION 10186-13 G. C.

SYLLABUS:

A cooperative agricultural association organized under the provisions of Sections 10186-1 to 10186-30 inclusive, General Code, in addition to being directly authorized to issue both common and preferred stock, may provide for classification of such shares as authorized in Section 8623-4, General Code, so long as none of such shares provides for the payment of dividends in excess of eight per cent per annum and appropriate restrictions are incorporated in the by-laws and printed on all classes of common stock, restricting the sale of common stock to persons engaged in the production of agricultural products handled by the association as required by Section 10186-13, General Code.

Columbus, Ohio, June 14, 1940.

Hon. George M. Neffner, Secretary of State,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of a communication from your office requesting my opinion, which reads as follows:

“Sections 10186-1 to 10186-30 of the General Code, known as the Ohio Cooperative Marketing Act, provide that associations organized thereunder may issue common and preferred stock but makes no specific reference to any classification of either the common or preferred stock. Section 8623-4 of the General Code, dealing with corporations for profit, provides for the issuance of classified shares of stocks by such corporations. Section 10186-28 of the General Code provides that the provisions of the general corporation

laws of the State shall apply to cooperative marketing associations except where such provisions are in conflict with or inconsistent with the express provisions of the Cooperative Marketing Act.

In view of the foregoing, may a cooperative marketing association, organized under the provisions of Sections 10186-1 to 10186-30 of the General Code of Ohio, issue classified shares of stock, or are such associations limited to the issuance of but one class of common stock and one class of preferred stock?"

Sections 10186-1 to 10186-30 inclusive, General Code, were enacted by the 85th General Assembly in 1923 as Amended Senate Bill 266. The Act authorizes the incorporation of cooperative agricultural associations and defines the powers of such associations. Section 10186-16, General Code, provides that such corporations and their members may make and execute cooperative marketing contracts requiring the members to market their agricultural products through the association. Section 10186-2, General Code, provides that such non-profit associations may be formed with or without capital stock. Its stock may be divided into common and preferred shares as shown by Section 10186-6, General Code, which provides:

"Each association formed under this act (G. C. Secs. 10186-1 to 10186-30) must prepare and file articles of incorporation, setting forth:

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(f) If organized with capital stock, the amount of such 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 definite extent of the preference and privileges granted to each.

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Section 10186-4, General Code, in defining the powers of the corporation, provides:

"Each association incorporated under this act (G. C. Secs. 10186-1 to 10186-30) shall have the following powers:

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(h) 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 subjects (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."

Section 10186-28, General Code, to the same effect provides:

"The provisions of the general corporation laws of this state and all powers and rights thereunder, shall apply to the association organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act (G. C. Secs. 10186-1 to 10186-30)."

The legislature thus seems to have been doubly anxious to supplement the Cooperative Agricultural Association Act with all the provisions of the General Corporation Act which are not in conflict or inconsistent with its express provisions. There are many references in the Cooperative Agricultural Act to the issuance of stock, both common and preferred. There are some limiting provisions in the Act regarding stocks which might be conflicting and inconsistent with the General Corporation Act, for example, in Section 10186-13, General Code, where it is provided that dividends on stock shall be limited to an amount not greater than eight per cent per annum. The same section requires the by-laws to prohibit the transfer of common stock to persons not engaged in the production of the agricultural products handled by the association and requires such restrictions to be printed on all such stock certificates. In Section 10186-6 (f), General Code, it is stated that where common and preferred stocks are to be issued, 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 definite extent of the preference and privileges granted to each." In Section 10186-13, General Code, it is provided that no stockholder in such association shall own more than one-twentieth of the common stock or such lesser amount thereof as the by-laws may provide. I have been unable to find any "express provisions" in the Act prohibiting the classification of shares of stock in such cooperative associations.

Section 8623-4, General Code, of the General Corporation Act, as you

have noted, authorizes corporations for profit to issue classified shares of stock and to define the rights, terms and provisions of shares in each of such classes. Since provisions of the General Corporation Act apply to cooperative agricultural associations where not inconsistent with the provisions of the Cooperative Agricultural Act, it appears that such associations may properly issue classified shares so long as the classifications made do not provide that any classes of stock shall pay dividends in excess of eight per cent per annum, and that adequate provisions are made restricting the sale of all classes of common stocks to persons engaged in the production of agricultural products handled by the association.

Respectfully,

THOMAS J. HERBERT,
Attorney General.