

assistance to you in determining the proper answer to these questions after the facts have been determined.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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286.

CORPORATION—CO-OPERATIVELY PURCHASING AND DISTRIBUTING  
OILS AND GREASES FOR MEMBERS AND OTHER PURPOSES—  
ARTICLES MAY BE FILED UNDER SECTION 10185, GENERAL CODE.

*SYLLABUS:*

*Articles of incorporation stating that the purpose for which the corporation is formed shall be "co-operatively purchasing and distributing oils and greases for members and other purposes," do not set forth a purpose such as to permit the incorporation of a co-operative agricultural association under the provisions of Section 10186-1 to 10186-30, inclusive, General Code. Such articles may be filed under Section 10185, General Code, providing for co-operative trade associations.*

COLUMBUS, OHIO, April 10, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date, which is as follows:

"Your attention is directed to Section 10185, et seq. of the General Code, having to do with co-operative corporations, and in particular to Section 10186-1, et seq.

There has been submitted to this department for filing articles of an association to be known as The Hume Coop. Oil Company. The only purpose stated is that the association is formed for the purpose of co-operatively purchasing and distributing oils and greases for members and other persons.

The certificate also recites that all of the incorporators are engaged in the purchasing of gasoline, oils and greases and desiring to form a co-operative association for the purchasing of oils and greases to be used by the farmers of this state, with capital stock under the provisions of G. C. 10186-1 to 10186-30.

Your opinion is requested as to whether or not articles of incorporation may be filed as a co-operative agricultural association which articles set forth a purpose as herein stated."

There is attached to your letter articles of incorporation of this company on your usual form provided for corporations not for profit under Section 8623-97 of the General Corporation Act. A corporation not for profit organized for the purposes therein set forth may clearly not be organized under the General Corporation Act, for the reason that Section 8623-97 expressly provides:

"A corporation not for profit may be formed hereunder for any purpose or purposes not involving pecuniary gain or profit for which natural

persons may lawfully associate themselves, provided that where the general Code makes special provisions for the filing of articles of incorporation of designated classes of corporations not for profit, such corporations shall be formed under such provisions and not hereunder."

Clearly the purpose set forth attempts to place this corporation within one of the designated classes of corporations not for profit, provisions for which are found elsewhere in the General Code.

Sections 10186-1 to 10186-30, General Code, inclusive, provide for co-operative agricultural associations. Section 10186-3, General Code, provides that "An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members \* \* \* ; or in connection with the manufacturing, selling or supplying to its members of \* \* \* supplies of any kind or character; \* \* \* ."

The following section, 10186-4, provides for the powers of such association, which are enumerated under subdivisions (a) to (h) inclusive. Subdivision (a) is as follows:

"To engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or others, or the manufacturing or marketing of the by-products thereof; or any activities in connection with the purchase, sale, hiring or use by its members or others, of supplies, machinery or equipment of any kind or character; or in the financing of such activities; or in any one or more of the activities specified in this section.

Any such association may limit its activities to the handling or the marketing products of its own members, except for storage. If it handles the products of non-members, such non-members' products handled in any fiscal year must not exceed the total of similar products handled by the association for its own members during the same period."

Subdivision (h) refers to the doing of anything necessary to accomplish any "one or more of the subjects (objects) herein enumerated."

An examination of these sections leads me to believe that the co-operative agricultural associations provided for are primarily marketing associations, and that the power to purchase supplies for the members of such association, is incidental to the provisions as to the marketing of agricultural products. An inspection of the provisions of this act, defining who may be members, strengthens this view. It is provided in Section 10186-5 that:

"Under the terms and conditions prescribed in the by-laws adopted by it, an association may admit as members, (or issue common stock to), only co-operative marketing associations or persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent all or any part of the crop raised on the leased premises.

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It is expressly implied here that the membership of such association shall be limited to persons or associations engaged in the production of the agricultural

products to be handled by or through the association. Clearly, under this provision, it is contemplated that the powers which such association may have as to purchasing supplies is, as already pointed out, incidental to the chief purpose of marketing the products of its members.

I am, therefore, of the opinion that the articles of incorporation presented to you cannot be lawfully filed in your office under the provisions of Sections 10186-1 to 10186-30, inclusive, General Code, providing for a co-operative agricultural association.

Sections 10185 and 10186, General Code, provide for co-operative trade associations. Section 10185 is as follows:

“An association incorporated for the purpose of purchasing, in quantity, grain, goods, groceries, fruits, vegetables, provisions, or any other articles of merchandise, and distributing them to consumers at the actual cost and expense of purchasing, holding, and distribution, may employ its capital and means in the purchase of such articles of merchandise as it deems best for itself, and in the purchase or lease of such real and personal estate, subject always to the control of the stockholders, as are necessary or convenient for purposes connected with and pertaining to its business.”

Clearly, the purpose clause submitted contemplates the exercise of no powers in excess of those set forth in this section, and I am therefore of the opinion that such articles may be filed as a corporation not for profit as therein provided.

The articles are returned to you herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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287.

PUBLICATION — MUNICIPAL EMERGENCY ORDINANCES — LAWFUL  
BUT NOT REQUIRED.

*SYLLABUS:*

*The proper officials of a municipality may cause to be published an emergency measure, although such publication is not required to be made.*

COLUMBUS, OHIO, April 10, 1929.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge receipt of your recent communication, which reads as follows:

“In the case of *Van Such vs. State Ex Rel.*, 112 O. S. 688, at page 689, it is stated:

‘It was held by this court in *Shryock, a Taxpayer, vs. City of Zanesville*, 92 Ohio St. 375, 110 N. E. 937, that the council of a municipality is authorized to pass emergency ordinances necessary for the immediate preservation of the public peace, health, and safety. Such ordinances do not require publication, and are not subject to the referendum, but go into immediate effect.’

Question: Is it the duty of the bureau to find that payments from the