

1959.

APPROVAL, BONDS OF CARTHAGE TOWNSHIP RURAL SCHOOL DISTRICT,  
ATHENS COUNTY—\$18,000.00.

COLUMBUS, OHIO, June 9, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

1960.

CORPORATION—FARM ORGANIZATION FORMED UNDER GENERAL  
CORPORATION LAWS BEFORE PASSAGE OF VARIOUS COOPERATIVE  
AGRICULTURAL ASSOCIATION ACTS—AUTHORITY TO ACCEPT  
PROVISIONS OF SECTIONS 10186-1 to 10186-30, INCLUSIVE, GENERAL  
CODE.**SYLLABUS:**

*Any corporation heretofore organized as an agricultural association for purposes similar to those for which a corporation may be incorporated under Sections 10186-1, et seq., may, under the provisions of Section 10186-25, become a cooperative agricultural association as therein provided.*

COLUMBUS, OHIO, June 9, 1930.

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

DEAR SIR:—Your letter of recent date is as follows:

“Various enactments to authorize the incorporation of cooperative agricultural associations and to define the powers thereof have been passed by several of our recent Legislatures. The present Act is found as G. C. 10186-1 to 30. This Act (110 v. 91) is a complete codification and entirely supersedes two former Acts, G. C. 10186-1 to 21 (108 v. Pt. 2, 1250) and G. C. 10186-22 to 30 (109 v. 50).

Previous to the enactment in 108 Ohio Laws, there were various farm organizations incorporated under the General Corporation Laws. You will find that Section 25 of the Act in 110 v. 91 authorizes the acceptance of the present Act by associations organized under previously existing statutes. In passing, your attention is called to the fact that Section 25 in the Act of 109 v. 50 has to do with an entirely different subject matter. Is the language in 10186-25 intended to refer only to associations organized under the provisions of 108 v. Pt. 2, 1250, and 109 v. 50, or does it permit a corporation organized previously thereto, to accept the provisions of present Sections 10186-1 to 30?

The S. Grain Company was incorporated under the General Corporation Laws as a for profit organization August 21, 1916. And, the R. Equity Exchange Company was also organized under the General Corporation Laws as a for profit corporation under date of October 22, 1920. Both of these corporations now desire to accept the benefits of the Cooperative Marketing Act. For your full information in such connections, I enclose the originals of the proposed filings by both companies, also letters of transmittal which

accompanied the proposed fillings. One letter in particular explains the reasons for the association desiring to accept the provisions of the Cooperative Marketing Act at this time."

Section 10186-25, General Code, provides in part:

"Any association, organized under previously existing statutes, may, by a majority vote of its members, be brought under the provisions of this act (G. C. Secs. 10186-1 to 10186-30) 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 to the effect that the association has, by a majority vote of the members, decided to accept the benefits and be bound by the provisions of this act and has authorized all changes accordingly. Articles of incorporation shall be filed as required in Section 8 (G. C. Sec. 10186-8), except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

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Prior to the year 1920, no provision was made for the incorporation of cooperative agricultural associations under other than the General Corporation Laws of the State. Sections 10186-1, et seq., were enacted in that year by the 83rd General Assembly as "An act to authorize the incorporation of cooperative agricultural associations and to define the powers thereof." This act contained no provision such as is now contained in Section 10186-25, supra, authorizing associations organized under previously existing statutes to be brought under its provisions, Section 10186-25 in its present form not having been enacted until the year 1923. The Cooperative Agricultural Act referred to in Section 10186-25 is contained in Sections 10186-1 to 10186-30, General Code, both inclusive. Section 10186-1 provides as follows:

"As used in this act (G. C. Secs. 10186-1 to 10186-30) (a) the term 'agricultural products' shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee and any farm 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; 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 not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers."

If cooperative agricultural associations, as such, are corporations not for profit in the true sense, there would probably be no authority for a corporation heretofore organized as a corporation for profit becoming a cooperative agricultural association by amending its articles. Notwithstanding the fact that Section 10186-1 provides that these associations shall be deemed "non profit", the same sentence provides in effect that they may be organized to make profit for their members as producers. In other words, the members of such associations may not profit from their membership as members, but only as a result of their membership because they are producers. Section 10186-6 provides that the articles of incorporation may provide for the issuance of capital stock divided into preferred and common stock, and Section 10186-13 expressly recognizes that dividends may be paid on the preferred stock of such associations in any amount not greater than eight per cent per annum and that all other profits shall be distributed to the association's members on the basis of patronage.

While the Legislature has seen fit to provide that these associations "shall be deemed 'non profit'", it is obvious that although they may be actually non profit corporations for some purposes, they are not corporations not for profit in the sense that a corporation organized for the purpose of charity, for instance, is a corporation not for profit.

Provision was made for the incorporation of associations known as cooperative trade associations as early as 1867. Provisions for these associations are contained in Sections 10185 and 10186, General Code. Section 10186 provides that profits arising from the business may be divided among the stockholders from time to time in proportion to their purchases. Obviously these associations are in the true sense corporations for profit.

In view of the foregoing, I have little difficulty in concluding that simply because a cooperative agricultural association may have been incorporated prior to the enactment of Sections 10186-1, et seq., as a corporation for profit, it should not thereby be precluded from availing itself of the benefits of the present provisions relating to cooperative agricultural associations as provided in Section 10186-25.

The language of Section 10186-25, wherein it is provided that "any association organized under previously existing statutes" may be brought under the provisions of the act providing for cooperative agricultural associations, is very broad. Had the Legislature intended that the section should only refer to associations organized under the cooperative agricultural association act prior to its amendment in 1923, it would probably have said so. In my view, the language of Section 10186-25 includes any cooperative agricultural associations heretofore incorporated regardless of the particular sections of the law under which they might have been incorporated. The section only refers to "any association", and I think it is, therefore, clear that the reference is to any association of a similar nature or for a similar purpose to the cooperative agricultural associations now provided for in Sections 10186-1, et seq., heretofore organized.

Specifically answering your questions, it is my opinion that any corporation heretofore organized as an agricultural association for purposes similar to those for which a corporation may be incorporated under Sections 10186-1, et seq., may, under the provisions of Section 10186-25, become a cooperative agricultural association as therein provided.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

1961.

#### ELECTION LAW—BOARD OF ELECTIONS—HOW PURCHASES OF SUPPLIES OTHER THAN BALLOTS TO BE MADE.

##### SYLLABUS:

1. *Purchases by the board of elections, in cases other than contracts for the printing of the ballots, are not required to be made in pursuance of advertisement and competitive bidding.*
2. *The provisions of Section 5625-33 of the General Code have no application to purchases made or contracts entered into by the board of elections.*
3. *When the election board orders necessary supplies or makes proper contracts for the printing of the ballots, payments therefor shall be made upon vouchers of the board certified to by its chairman or acting chairman and the clerk or deputy clerk upon warrants of the auditor.*