

effected even though the said township trustee, after taking office, permits his firm to deliver supplies contracted for by the county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2598.

COOPERATIVE TRADE ASSOCIATION — MEMBERSHIP
CARD—RIGHT TO PURCHASE CERTAIN DESCRIBED
MERCHANDISE—NOT “SECURITY”—APPLICATION OF
SECTIONS 10185, 10186, 8624-2 (2) AND 8624-3 (8) G. C.

SYLLABUS:

1. *A membership card issued by a cooperative trade association organized under Sections 10185 and 10186, General Code, which card gives the member a right to participate in purchasing certain described merchandise at cost is not a “security” within the meaning of that term as defined in Section 8624-2 (2), General Code.*

2. *A membership card issued by a cooperative trade association organized under Sections 10185 and 10186, General Code, is exempt under the provisions of Section 8624-3 (8), General Code.*

COLUMBUS, OHIO, June 15, 1938.

HON. DAN T. MOORE, *Chief, Division of Securities, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date requesting my opinion as to whether or not membership cards issued by a corporation organized pursuant to the provisions of Sections 10185 and 10186, General Code, are securities within the meaning of Section 8624-2, paragraph (2), General Code.

Cooperative trade associations may be organized in this state pursuant to the provisions of Section 10185, General Code, which reads 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.”

Section 10186, General Code, providing for the distribution of profits arising from the business of a cooperative trade association, reads as follows:

“Such association may adopt such plan of distribution of its purchases among the stockholders and others as is most convenient, and the best adapted to secure the ends proposed by the organization. Profits arising from the business may be divided among the stockholders from time to time, as it deems expedient, in proportion to the several amounts of their respective purchases.”

It is to be noted that under the provisions of the latter section, the profits arising from the business are required to be distributed in proportion to the respective purchases rather than in proportion to any amount which may be contributed by the members of such an association.

The question as to whether or not a cooperative trade association organized pursuant to the foregoing provisions is a corporation for profit or not for profit was considered by this office on several occasions. In Opinions of the Attorney General for 1919, Vol. I, page 213, it was held as disclosed by the first three branches of the syllabus:

“1. A cooperative trade association cannot be incorporated for profit under Sections 10185 and 10186 G. C.

2. The profits of a cooperative trade association contemplated by Section 10186 G. C., are such as arise incidentally from sales, on account of the impracticability if not the impossibility of determining in advance the exact cost and expense of purchasing, holding and distribution, or such as may arise from the sale of surplus stock remaining after the stockholders and customers embraced in the association's plan of distribution have been supplied.

3. Distribution of such profits among the association's stockholders must be in proportion to the 'several amounts of their respective purchases.'”

In Opinions of the Attorney General for 1935, Vol I, page 410, my predecessor in office agreed with the reasoning of the 1919 opinion and

held that cooperative trade associations organized pursuant to Sections 10185 and 10186, General Code, should be incorporated as corporations not for profit.

Section 8624-2, paragraph (2), General Code, defines the term "security" in so far as pertinent to the question presented by your letter, as follows:

"The term 'security' shall mean any certificate or instrument which represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property or credit of any person * * *, and shall include shares of stock, certificates for shares of stock, voting trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates in or under profit sharing or participation agreements, * * *, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any instrument evidencing a promise or an agreement to pay money, and the currency of any government other than that of the United States and Canada, but the provisions of this act shall not apply to bond investment companies or to the sale of real estate or any interest in real estate intended for burial purposes.

* * * * * * * * *

The membership card issued by the cooperative trade association in question authorizes the member to participate in the purchasing of certain merchandise at cost. No dividends will be paid to members and no redemption can be claimed by any member. There is nothing in your letter which would indicate that the membership cards would represent an interest in the capital, assets, profits, property or credit of the cooperative trade association, and in view of the provisions of Sections 10185 and 10186, General Code, it would not be possible for a corporation to organize under such provisions and issue to its members any certificate which would represent an interest, as above outlined. The only interest members of a cooperative trade association have is to share in the "profits" in proportion to their respective purchases. The Attorney General in the opinion for 1919 above referred to said at page 213:

“Under Section 10185 G. C. the distribution of the association’s authorized purchases must be made ‘at the actual cost and expense of purchasing, holding and distribution.’ While it is true that Section 10186 G. C. provides that ‘profits arising from the business’ may be divided among the stockholders in proportion to the several amounts of their respective purchases, the ‘profits’ referred to are, in my opinion, such as may arise incidentally from sales, on account of the impracticability if not the impossibility of determining in advance the exact cost and expense of purchasing, holding and distribution, or such also as may arise from the sale of surplus stock remaining after the wants of stockholders and customers, who are embraced in the association’s plan of distribution, have been supplied.”

In view of the above, it would seem that a membership card issued by a cooperative trade association organized under Sections 10185 and 10186, General Code, which card gives the member a right to participate in purchasing certain described merchandise at cost is not a “security” within the meaning of that term as defined in Section 8624-2(2), General Code.

It is not necessary, however, in so far as this opinion is concerned, to determine definitely whether or not membership cards issued by cooperative trade associations are securities within the purview of the Securities Act, for securities issued by certain associations organized not for profit are exempt under Section 8624-3, General Code, which provides in part:

“The following securities shall be exempt from the provisions of Sections 8, 9, 10, 13 and 14 hereof, and the requirements therein set forth need not be complied with.

* * * * *

(8) Any security (except notes, bonds, debentures, or other evidences of indebtedness or of a promise or agreement to pay money) issued by a person, corporation or association organized not for profit, including those organized exclusively for religious, educational, social, recreational, athletic, benevolent, fraternal, charitable, reformatory, cooperative marketing purposes or for conducting a county fair; provided no part of the net earnings of such issuer inures to the benefit of any shareholder, member or individual, and providing further that the total commission, remuneration, expense or discount in connection with the sale of such securities does not exceed two per centum (2%) of the total sale price thereof plus \$500.00.”

In the case of *Catterlin vs. State*, 16 O. L. Abs. 410, decided by the Court of Appeals of the Second District, it was held that where holders of certificates of a corporation organized not for profit might become entitled to share in the earnings of the corporation, such certificates are not exempt by virtue of Section 8624-3(8), General Code, although on their face they do not require nor contemplate earnings. Cooperative trade associations under no circumstances can anticipate earnings for the purpose of distributing same to their members. Any "profits" of such association necessarily arise by reason of the impossibility of determining in advance the exact cost and expense of purchasing, holding and distributing merchandise to members. Such "profits" must be returned to the members in proportion to their respective purchases. Consequently, there can be no earnings of a cooperative trade association to which a member of such corporation might become entitled to share.

In view of the reasoning of the court in *Catterlin vs. State*, supra, it is my opinion that a membership card issued by a cooperative trade association organized under Sections 10185, and 10186, General Code, is exempt under the provisions of Section 8624-3(8), General Code.

Respectfully,

HERBERT S. DUFFY, .

Attorney General.

2599.

APPROVAL—BONDS, CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO, \$2,000.00, PART OF ISSUE DATED DECEMBER 15, 1933.

COLUMBUS, OHIO, June 15, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of Columbus, Franklin County,
Ohio, \$2,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of sewage treatment works bonds in the aggregate amount of \$2,720,000, dated December 15, 1933, bearing interest at the rate of 3% per annum.