

## Article 21.

### Powers, Duties, and Liabilities.

#### **§ 54-151. Powers.**

Each association incorporated under this Subchapter shall have the following powers:

- (1) To engage in any activity in connection with the producing, marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members and other farmers; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No such association, during any fiscal year thereof, shall deal in or handle products, machinery, equipment, supplies, and/or perform services for and on behalf of nonmembers to an amount greater in value than such as are dealt in, handled, and/or performed by it for and on behalf of members during the same period.
- (2) To borrow money and to make advances to members and other farmers who deliver agricultural products to the association.
- (3) To act as the agent or representative of any member or members in any of the above-mentioned activities.
- (4) To purchase or otherwise acquire, and to hold, own, and exercise all rights or ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association, or engaged in the financing of the association.
- (5) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws.
- (6) To buy, hold, and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.
- (7) 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 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 and powers, and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this Subchapter; and to do any such thing anywhere. (1921, c. 87, s. 6; C.S., s. 5259(x); 1933, c. 350, ss. 3, 4; 1935, c. 230, ss. 7-9.)

#### **§ 54-152. Marketing contract.**

(a) The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell

or resell the products of its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including dividends on preferred stock, not exceeding ten percent (10%) per annum, and reserve for retiring the stock, if any; and other proper reserves; and dividends not exceeding ten percent (10%) per annum upon common stock.

(b) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State.

(c) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

(d) In the event that a member of an association incorporated under this chapter shall have died; and that, at a time more than six months after his death, such cooperative corporation has in its hands moneys not in excess of one hundred dollars (\$100.00) which would have been distributable and payable to such member except for his death; and that there has been appointed no administrator of his estate or that the administration of his estate has been closed at such time; then such corporation, without making any publication of notice, may disburse such moneys (not in excess of one hundred dollars (\$100.00)) in the following order:

- (1) To the widow of the deceased if there is a widow,
- (2) To pay any unsatisfied claims for funeral expenses or reimburse any person for the payment thereof, and
- (3) To any adult person of the class of those nearest of kin to the deceased, for the benefit of all members of such class.

In making such disbursements the said corporation shall be responsible and liable only for the exercise of good faith and reasonable care and shall have no further responsibility or liability with respect to such moneys or their application or disbursement. (1921, c. 87, s. 17; C.S., s. 5259(y); 1959, c. 1174; 1979, 2nd Sess., c. 1302, ss. 1, 2.)

**§ 54-153. Purchasing business of other associations, persons, firms, or corporations; payment; stock issued.**

Whenever an association organized hereunder with preferred capital stock shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may by agreement with the other party or parties to the transaction discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for shares of stock issued. (1921, c. 87, s. 18; C.S., s. 5259(z).)

**§ 54-154. Annual reports.**

Each association formed under this Subchapter shall prepare and make out an annual report on forms furnished by the Division of Markets, containing the name of the association, its principal place of business, and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up, and the number of stockholders of a stock association or the number of members and the amount of membership fees received, if a nonstock association; the total expenses of the operations; the amount of its indebtedness, or liability, and its balance sheets. (1921, c. 87, s. 19; C.S., s. 5259(aa).)

**§ 54-155. Interest in other corporations or associations.**

An association may organize, form, operate, own, control, have interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. (1921, c. 87, s. 22; C.S., s. 5259(bb).)

**§ 54-156. Contracts and agreements with other associations.**

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements, and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association, or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses. (1921, c. 87, s. 23; C.S., s. 5259(cc).)

**§ 54-157. Breach of marketing contract of cooperative association; spreading false reports about the finances or management thereof; misdemeanor.**

Any person or persons, or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a Class 2 misdemeanor and subject only to a fine of not less than one hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000), for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500.00) for each such offense: Provided, that this section shall not apply to a bona fide creditor of any member or stockholder of such association, or the agents or attorney of any such bona fide creditor, endeavoring to make collection of the indebtedness, or to any communication, written or oral, between a business company or concern and persons with whom it has an existing contractual relationship which communication relates to the performance of that contractual relationship and duties and responsibilities arising therefrom.

(1921, c. 87, s. 25; C.S., s. 5259(dd); 1963, c. 1168, s. 14; 1993, c. 539, s. 430; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 54-158. Cooperative associations may form subsidiaries.**

Nothing in this Subchapter shall prevent an association organizing, forming, operating, owning, controlling, having an interest in, owning stock of, or being a member of any other corporation (hereinafter referred to as a subsidiary corporation) from including or having included in the charter or bylaws of such subsidiary corporation provisions for the control or management of said subsidiary corporation by such association to such extent as shall by votes of the board of directors of such association, and the majority of the stockholders of such subsidiary corporation, be declared to be for the best interests of said association and said subsidiary corporation respectively. Such provisions may be so included in any such charter or bylaws and may by way of illustration, but not of limitation, include the following:

- (1) Representation of said association on the board of directors or other governing body of said subsidiary corporation, upon such terms as may be deemed advisable.
- (2) Ownership by an association of an interest or interests in a subsidiary corporation represented by stock of any class thereof, or otherwise, to such extent and upon such terms, and with such voting power, as may be deemed advisable.
- (3) Participation by said association in the profits of such subsidiary corporation to such extent and upon such terms as shall be deemed advisable. (1933, c. 350, s. 1.)