



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable William J. Lawson  
Secretary of State  
Austin, Texas

Dear Sir:

Opinion No. O-4472  
Re: Farmers Union Supply Company  
may not change purpose clause  
under facts presented.

Your request for an opinion of this department  
reads:

"For many years prior to January 18, 1939, the Farmers Union Supply Company was a company organized under and by virtue of the General Laws of Texas with a purpose clause setting forth the powers of said corporation for the purpose of buying and selling general merchandise and all kinds of farm products under Section 39 of Article 1302 of the Revised Civil Statutes. On said date, to wit, January 18, 1939, the stockholders voted to adopt the provisions of the Cooperative Marketing Act of Texas under Article 5760 of the Revised Civil Statutes. This amendment was prepared, filed and approved by the Secretary of State, since which time the corporation has been operating under and by virtue of the powers granted under said Article 5760 under the provisions and requirements of the marketing associations.

"The stockholders and the directors now present to this Department an amendment changing the purpose clause and adopting the provisions of Section 40 of Article 1302. This Department returned the amendment with the advice that the purpose clause could not be so radically changed; that such change was not

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authorized by Article 1314. The amendment has been returned to us again by the attorneys of the above captioned corporation insisting that if they had a right to amend the charter in the first place and adopt the Marketing Association law as prescribed in Article 5760, then they had a right to re-amend and re-adopt a purpose clause substantially as outlined in the original corporation.

"We find no provisions of the statutes permitting this last amendment.

"We request that you advise us as to whether or not Article 1314 of the statutes, or any other provisions would authorize the Secretary of State to file and approve the amendment referred to above."

You state that the corporation involved in your inquiry originally adopted as its purpose Subdivision 39 of Article 1308, Vernon's Annotated Civil Statutes, reading:

"39. To purchase and sell goods, wares and merchandise, and agricultural and farm products."

Such corporation thereafter availed itself of the provisions of and advantages afforded by the Marketing Association Act, being Chapter 8 of Title 93 of Vernon's Annotated Civil Statutes. Such adoption was by virtue of Article 5760 thereof reading in part:

"Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter 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, upon forms supplied by the Secretary of State, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this chapter. . . ."

After having adopted the terms and provisions of Chapter 8, supra, the corporation now seeks to amend its charter so as to have as its purpose clause Subdivision 40 of Article 1302, supra, reading:

"40. To buy and sell goods, wares and merchandise of any description, by wholesale or wholesale and retail, with a capital stock of not less than twenty thousand dollars; provided, such wholesale and retail business shall not be conducted apart or in separate establishments."

Article 1314, Vernon's Annotated Civil Statutes, provides that any private corporation created by virtue of Title 32 may amend its charter, but such right is limited by the last sentence thereof reading:

"No amendment or change violative of the Constitution or laws of this State or any provision of this title or which so changes the original purpose of such corporation as to prevent the execution thereof, shall be of any force or effect."

Article 5743 of the Marketing Act provides:

"The Articles of Incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the Association. Amendments to the Articles of Incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this State."

Article 5740 of the Marketing Act provides:

"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 with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing

of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. Provided, however, any such activity may extend to non-members and their products limited by Article 5738 as heretofore amended."

When the Farmers Union Supply Company adopted the provisions of the Marketing Act, it adopted, either intentionally or unintentionally, the above quoted Article 5740 as its purpose clause, thus acquiring all the rights and privileges afforded by the Act as well as becoming bound by its limitations.

We held in our opinion No. 0-3989, the original of which you have in your files, that a corporation could not change its purpose from Subdivision 06 to Subdivision 67 of Article 1302. Such holding was predicated upon the proposition that the proposed change would be a fundamental and material change in the corporate purpose and was such a change as to prevent the execution of the original purpose.

Is there a fundamental and material change in the instant case, where it is sought to change the purpose from that authorized by Article 5740 to that contained in Subdivision 40 of Article 1302, supra? Would the proposed amendment so change the present purpose of the corporation as to prevent the execution thereof? We believe it unnecessary to analyze these two articles as a casual reading thereof will furnish ample affirmative evidence that to adopt the latter article as a purpose clause will render the corporation unable to perform any of the functions and to exercise some of the rights and privileges now enjoyed as well as vesting it with certain rights and privileges which it does not now enjoy.

It is our opinion that you are without authority to approve the proposed amendment.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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STATE OF TEXAS  
1910

By *Lloyd Armstrong*  
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APPROVED  
OPINION  
COMMITTEE  
BY *Blutz*  
CHAIRMAN

*7/97*