



ID # 14836
MBJ

TEXAS DEPARTMENT OF AGRICULTURE

RICK PERRY
Commissioner

January 27, 1992

RT-321

The Honorable Dan Morales
Attorney General
State of Texas
The Price Daniel Building
P.O. Box 12548
Austin, Texas 78711

FEB 04 92

Re: Request for Opinion concerning voting rights of members of Cooperative Marketing Associations organized under Chapter 52, Agriculture Code.

Dear General Morales:

A request has been made of this agency by the Texas Agricultural Cooperative Council for an interpretation of TEX. AGRIC. CODE ANN. §52.012 and §52.085 (Vernon 1982), regarding voting rights of members of Cooperative Marketing Associations.

Specifically, the agency seeks resolution of an apparent conflict between Sections 52.012 and 52.085 of the Code.

Section 52.012 of the Code provides:

"(a) A marketing association shall be operated for the mutual benefit of its members, as producers, and shall conform to one or both of the following requirements:

(1) a member of the association may not have more than one vote based on the member's ownership of stock or membership capital in the association; or

(2) the association may not pay dividends on stock or membership capital in excess of eight percent a year."
TEX. AGRIC. CODE ANN. §52.012(a) (Vernon 1982) (emphasis added)

...

Section 52.085 of the Code provides:

"(a) Except as provided by Subsection (b) of this section, a member of a marketing association is entitled to one vote."
(Subsection (b) allows qualifying citrus associations to provide for member associations or groups to have more than one vote.) TEX. AGRIC. CODE ANN. §52.085(a) (Vernon 1982).

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Section 52.012 appears to give associations an option: association members **may have more than one vote**, but the association must, in turn, comply with the eight percent dividend restrictions.

Section 52.085 of the Code appears to establish a voting **entitlement** as opposed to a voting **limitation**; however, since §52.085 specifically provides that subsection (b) is the only exception, the implication is that unless the association is a qualified citrus association, members are **only entitled to one vote**. This interpretation places §52.085 in direct conflict with §52.012(a).

It is possible that the legislature intended for the one member/one vote rule of §52.085(a) to dominate, with §52.012(a)(2) only having application to qualified citrus associations exempted from the one member/one vote provision. In other words, non-exempt associations would be restricted to one vote per member under §52.085 and would thus automatically be in compliance with §52.012(a). Such associations could then, **at their option**, choose to comply with §52.012(b) regarding dividend restrictions. Qualified, exempt citrus associations which allow in excess of one vote for member associations or groups would be unable to comply with §52.012(a), and would therefore be **required** to observe the dividend payment restrictions of §52.012(b). Such an interpretation would resolve the apparent conflict, giving effect to both provisions.

However, this interpretation is not without problems. Section 52.012(a) specifically refers to voting rights based upon stock ownership or capital contribution, not based upon the member's status as an "association or group". Could this indicate the legislature's recognition of circumstances in which members (not just member associations or groups) could increase their entitlement by virtue of their purchase of additional voting stock?

In addition, if the legislature intended for §52.085(a) to constitute a mandatory voting limitation, why was the language altered significantly when the now-repealed Texas Civil Statutes article 5750 was codified? (See footnote 1.) Finally, why did the legislature omit the word "stock-holders" from §52.085(a)

¹ Tex. Rev. Civ. Stat. Ann. art. 5750 (repealed 1981), the predecessor to Section 52.085, clearly established a voting **limitation** for both members and stockholders: "No member or stockholder shall be entitled to more than one vote..."

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(exempting from the provision, for example, non-member holders of preferred voting stock)?²

Case law offers little guidance on this matter. In Etter Grain Co. v. United States 331 F.Supp. 283, aff'd, 462 F.2d 259 (5th Cir. 1972), the court addressed the issue of voting restrictions as it relates to tax exemptions provided by the Internal Revenue Code. In Etter the court held that Plaintiff was not a cooperative because, among other things, it failed to follow the statutory requirement of one vote per stockholder as set forth in Article 5750. However, as discussed previously, Article 5750 was changed when codified, and the word "stockholder" was omitted. Etter's discussion of legislative intent is also supportive of a one member/one vote rule; however, it must be noted that the "legislative intent" to which the discussion refers is federal legislative intent with regard to the enactment of Section 521 of the Internal Revenue Code of 1954, 26 U.S.C. §521.

As you can see, this is a very complicated issue, and your assistance in its resolution would be greatly appreciated.

It is therefore requested that an opinion be issued addressing the following concerns:

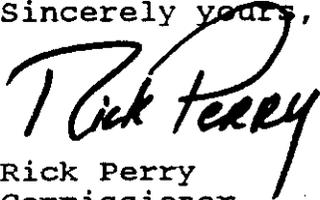
1. Whether the provisions of TEX. AGRIC. CODE ANN. §52.012 and §52.085 concerning cooperative marketing associations conflict regarding voting rights of members of cooperative marketing associations; and,
2. whether the provisions of TEX. AGRIC. CODE ANN. §52.012 and §52.085 can be construed in nonconflicting interpretations so as to produce one cohesive rule on the voting standard for cooperative marketing associations.

² Section 52.002(3) defines "member" as including a member of an association organized under this chapter without capital stock and a holder of common stock of an association organized under this chapter with capital stock". TEX. AGRIC. CODE ANN. §52.002(3).

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I look forward to your prompt response.

Sincerely yours,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive style with a large, looping initial "R".

Rick Perry
Commissioner

RP:GSC:BD:me