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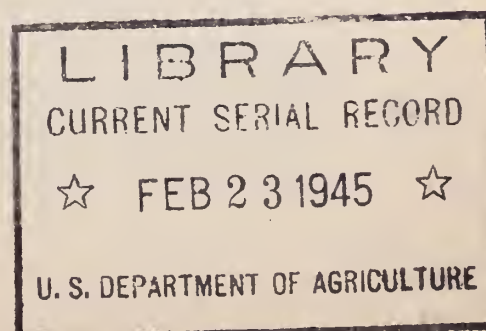
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LEGAL PROVISIONS FOR COOPERATIVE
TENURE IMPROVEMENT ASSOCIATIONS
IN THE NORTHERN GREAT PLAINS STATES

by

Stanley W. Voelker

UNITED STATES DEPARTMENT OF AGRICULTURE
Bureau of Agricultural Economics
Division of Land Economics
Northern Great Plains Region

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FOREWORD

This is the fourth of a series of memoranda on the legal aspects of state and local land management in the Northern Great Plains States. The objective of each report is to provide a brief description of the statutory provisions in each of these states for a single subject, so as to furnish a convenient reference for administrators, technicians and laymen who are working on post-war agricultural problems in this region. The previous memoranda deal with soil conservation districts, cooperative grazing associations and rural zoning enabling acts. Subsequent memoranda planned for this series will cover such subjects as county land administration, state land administration and tax-title procedure.

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The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the laws of quantum mechanics are based on the principle of the conservation of energy. The second part of the paper is devoted to a discussion of the experimental results of the study of the structure of the atom. It is shown that the experimental results are in good agreement with the theoretical predictions of the theory of the structure of the atom.

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LEGAL PROVISIONS FOR COOPERATIVE TENURE IMPROVEMENT

ASSOCIATIONS IN THE NORTHERN GREAT PLAINS STATES

A tenure improvement association may be defined in general terms as a cooperative corporation which purchases or leases land for use by its members or for resale to its members. As its name implies, the purpose of such an association is to improve the stability of tenure of its members. A cooperative farming corporation also has tenure stability as one of its purposes, but it differs from a tenure improvement association in that it is a farm operator, from both a legal and practical point of view, whereas a tenure improvement association is an intermediary between present landowners and the farm operators who are to use the land.

There is a great deal of variation among tenure improvement associations in organization, size, operations and financial methods. Associations which buy land to be leased or resold to members are usually organized with capital stock, while those which merely lease land for use by members usually are organized without capital stock. Some associations may be composed of a few neighborhood farmers, while others may operate over a wide territory and have a large membership. Some associations deal with only a certain type of land such as irrigated or grazing land; others may be set up to handle all land owned by some agency such as a county, state or federal agency; while still others purchase or lease all types of agricultural land from all types of landowners. Some associations may be financed by membership fees and rental receipts, others may depend heavily upon sale of stock to members, while still others must borrow large amounts of capital for long terms and at low rates of interest. Cooperatives in the last group may purchase land by issuing bonds to the vendors or they may be financed by loans from some governmental agency.

Grazing associations, organized under specific acts in Montana and the Dakotas, are a specialized type of tenure improvement association. Grazing associations also have been organized in other states under the same enabling acts that other tenure improvement associations are organized. Grazing associations, however, are not discussed in this memorandum, inasmuch as a previous report in this series deals exclusively with the organization and operation of such associations.

Only 2 of the Northern Great Plains States -- Nebraska and North Dakota -- have adopted special enabling legislation

to permit organization of tenure improvement associations. These 2 laws are discussed in some detail in the following sections. Certain types of such associations probably can be organized in the other 5 states under general cooperative corporation laws; in fact, a few associations actually have been chartered. Their general acts, however, contain limitations and requirements which render them inappropriate for some types of tenure improvement associations.

Nebraska Cooperative Farm Land Companies Act

The 1941 session of the Nebraska legislature adopted the cooperative farm land companies act for the incorporation of tenure improvement associations. Prior to the adoption of the 1941 act, such associations possibly could have been formed under the general cooperative corporations act, (Sec. 24-1301, et seq., C.S.N. 1929). The 1941 act has several definite advantages over the general cooperative corporations act:

(1) The cooperative farm land companies act was adopted for the express purpose of enabling the incorporation of tenure improvement associations; (2) a farm land company may be formed either with or without capital stock, whereas the general cooperative corporations law provides only capital stock type of organization; (3) only 5 incorporators are required for the organization of a farm land company, while 20 are required to form a general cooperative corporation; and (4) a farm land company is required to pay an annual filing fee of only \$1 in lieu of the annual occupational fees required of general cooperatives and other corporations, which vary from \$5 to \$2500, depending upon the amount of paid-up capital stock.

Procedure for organizing a cooperative farm land company.-

Five or more persons may organize a cooperative farm land company "for the purpose of facilitating the acquisition of agricultural and grazing lands by farmers and stock raisers." Such a company may enjoy the same powers and be subject to the same limitations as other corporations with a few exceptions listed in the act, the most important of which are described in this report. (Sec. 24-2101, 1941 Cum. Supp. C.S.N. 1929)

The articles of incorporation to be filed with the secretary of state before the charter is issued must include the following information and provisions: (1) the name of the corporation, which must include the word "cooperative"; (2) whether the company is organized with or without capital stock; (3) if organized with capital stock, no person may own more than 5 percent of the capital stock; (4) if organized without

capital stock, whether the property rights of members are to be equal or unequal and if unequal, the general rules for the determination of rights and interests of each member; and (5) the method for determining amount of dividends to be paid on capital stock, which in no event may exceed 6 percent. (Sec. 24-2102, 1941 Cum. Supp. C.S.N. 1929)

Powers and management of cooperative farm land companies.-

A cooperative farm land company has all of the general powers of private corporations. 1/ In addition, it also has the following special powers: (1) to regulate and limit the right of stockholders to transfer their stock; (2) to purchase, hold, sell, assign or transfer stock of other cooperative farm land companies and to exercise all the rights and privileges of stock ownership, including the right to vote; (3) to limit each stockholder to 1 vote regardless of number of shares held, to prohibit proxy voting and to regulate voting by mail by appropriate provisions in the bylaws; (4) to engage in any activity connected with the purchase, lease or acquisition of agricultural and grazing lands; (5) to mortgage or otherwise encumber such real estate; (6) to contract with its members and other farm land cooperatives for the sale, purchase or lease of land with such provisions for periodic payments, reserves, reamortization, supervision of land use, crop programming and other factors as may be agreed upon; (7) to contract with the state or federal government or with any nonprofit corporation to effectuate plans for rural rehabilitation; (8) to provide that continued membership in the cooperative be dependent upon the performance of contracts between members and the cooperative; and (9) to borrow money and to secure the payment thereof by mortgage or conveyance in trust of the property held by the cooperative. (Sec. 24-2103, 1941 Cum. Supp. C.S.N. 1929)

Each farm land cooperative must file an annual report with the secretary of state. This report must contain: (1) name of the corporation; (2) location of its principal office; (3) names and addresses of the president, secretary-treasurer and members of the board of trustees or directors; (4) date of

1/ The general powers of private corporations, as the term is used in this report are: (1) to have succession in its corporate name; (2) to sue and be sued; (3) to use a common seal and alter it at will; (4) to appoint such subordinate officers and agents as its business requires and to allow them suitable compensation; (5) to adopt bylaws for the management and regulation of the company; and (6) to acquire real estate and personal property needed in the conduct of its business and to sell or otherwise dispose of such property.

annual election; and (5) objective or purpose in which the incorporation is engaged. The secretary of state collects a fee of \$1 for this filing, which is in lieu of the usual occupational tax fees assessed against other corporations. (Sec. 24-2104 to Sec. 24-2106, 1941 Cum. Supp. C.S.N. 1929)

Investment in farm land cooperative bonds by insurance companies.- An insurance company, which sells land to a farm land cooperative, is authorized to accept bonds or other obligations of the cooperative secured by a first mortgage on the real estate up to the full amount of the purchase price of the land. These obligations are deemed a lawful investment for insurance company funds and may be deposited with the state department of trade and commerce as part of its required legal reserve, in the same manner as other approved securities. (Sec. 24-2107, 1941 Cum. Supp., C.S.N. 1929) Although the intent of this provision is to make it attractive for insurance companies to sell land on credit to cooperative farm land companies, no sales of this sort are known to have been made.

Use made of cooperative farm land companies act.- Only 3 companies have been organized under this law. One of them is a tenure improvement association organized in Scottsbluff County, which was to have been financed by FSA. Part of the loan was to be used to purchase land, but a federal administrative ruling held that FSA funds could not be used in this way and the loan agreement was not approved. The company apparently is not operating at the present time. Another farm land company was organized to finance settlement on the Mirage Flats Wheeler-Case Irrigation Project. Development of this project has been delayed because of the war. When development is completed, the cooperative plans to finance improvement and settlement on land to which the federal government has acquired title with rehabilitation corporation funds.

The third company was organized by a group of Polk County farm tenants under the leadership of a Nebraska life insurance company. The general plan under which this cooperative proposed to operate was to exchange its own bonds for corporate-owned land which would be sold to its members under flexible 40-year purchase contracts with a small down payment. The members felt that they would need a minimum of at least 12 farms to start the program. The insurance company which was interested in the plan owned only 1 farm in the locality where the cooperative wished to operate, and so an attempt was made to secure the cooperation of other insurance companies. Domestic companies appeared willing to cooperate, but the New York and New England companies which held the major portion of the corporate-owned land, refused to cooperate

apparently because they felt they could sell to other buyers to better advantage. If the cooperative had been organized 2 years earlier, its members feel it might have had some chance for success. As it is, the cooperative is lying dormant, although it may make another attempt to get started after the war.

North Dakota Mutual Aid Corporations Act

The North Dakota mutual aid corporations act contemplates the formation of nonprofit corporations, with or without capital stock for the purpose of carrying out programs of rural rehabilitation, subsistence farming, housing or cooperative endeavors of any nature. Such companies also may be organized to assist programs of this sort carried on by state, federal, and private agencies. A mutual aid company may be organized either as a cooperative or as an ordinary corporation.

The wording of the act is so broad that corporations can be organized for a wide variety of purposes, including all types of tenure improvement associations.

Procedure for organizing a mutual aid corporation.- At least 7 persons, residing in the area to be served by the mutual aid corporation, are required for organization. The organizers must prepare articles of incorporation and file one copy with the secretary of state. The articles must contain the following: (1) the name of the association, which must include the words "Mutual Aid Corporation"; (2) purpose for which formed; (3) principal place of business; (4) territory to be served; (5) if organized without capital stock, whether the property rights and interests of each member are to be equal or unequal; (6) if organized with capital stock, the amount of such stock, the number of shares into which it is divided and the par value of each; and (7) the names and addresses of those who are to serve as directors until their successors are elected and have qualified. In addition, if the property rights of the members in a nonstock corporation are to be unequal, the articles must establish the general rules for determining property rights and interest of all members, including new members. This provision of the articles may not be amended or repealed except by the written consent or vote of at least three-fourths of the members. Aside from this qualification, the articles may be amended at any regular or special meeting called for the purpose, if approved by two-thirds of the directors and a majority of the members. The fee charged by the secretary of state for filing articles of incorporation is \$2 and for issuing the certificate

of incorporation is \$3, regardless of the amount of capital stock. (Sec. 1, 2, 3, 7, and 8, Ch. 109, S.L. 1935, as amended by Sec. 1, Ch. 123, S.L. 1941)

Powers of a mutual aid corporation.- A corporation organized under this act has the 6 general corporate powers and in addition, the following special powers: (1) to engage in any corporate activity not otherwise prohibited by law; (2) to borrow money up to an amount stated in its articles of incorporation, which may even exceed the amount of its capital stock, to lend this money to its members in the manner set forth in its bylaws, and to pledge as collateral any note, mortgage, or other security it holds as a result of loans made to members; (3) to act as the agent or representative of any state, federal or private agency which is giving assistance to rural rehabilitation, subsistence farming, housing, or other cooperative endeavors; (4) to acquire, hold, transfer and pledge stocks, bonds or other obligations of these agencies assisting cooperative enterprises; and (5) to acquire, hold, transfer and mortgage real estate and personal property (including its own stock) necessary or convenient for the conduct of its business. (Sec. 4, Ch. 109, S.L. 1935)

A mutual aid corporation may require that any member or stockholder who applies for a loan from the corporation must comply with regulations established in the bylaws for purchase of additional stock, for payment of additional fees and for giving security. No loan may be made to anyone who is not a member or stockholder. Other cooperative corporations and unincorporated associations may be admitted to membership or may purchase stock as provided in the bylaws. (Sec. 5, Ch. 109, S.L. 1935, as amended by Sec. 1, Ch. 117, S.L. 1937)

According to a 1941 amendment, irrigation companies may be organized under the mutual aid corporations act to establish, own, lease, operate and maintain irrigation systems, and to sell and deliver water to its members or stockholders for irrigation or domestic use. An irrigation company, in addition to the powers enumerated above, has the express authority: (1) to acquire water rights, easements, equipment and facilities; (2) to construct and maintain irrigation and distribution systems; (3) to furnish water to its members and to sell water to anyone; (4) to adopt rules and regulations for furnishing water; (5) to fix tolls and charges for water; (6) to suspend delivery of water when assessments for water are not paid; and (7) to contract with individuals, corporations, irrigation districts and governmental agencies for supplying water to its members or stockholders. (Ch. 120, S.C. 1941)

Management of a mutual aid corporation.- Each mutual aid corporation, within 30 days after incorporation, is supposed

to adopt a code of bylaws by a majority vote of its members or stockholders, as the case may be. The principal limitation is that the bylaws must not be inconsistent with the act or the articles of incorporation. Among other things, the bylaws may contain provisions for any of the following: (1) the time, place and manner of calling and conducting its meetings; (2) the number of members or stockholders which constitutes a quorum; (3) the right of members or stockholders to vote by mail or by proxy and the manner and form of such votes; (4) number of directors which constitutes a quorum; (5) penalties for violation of bylaws; (6) amount of entrance, organization and membership fees, if any, the method of collecting the same and the purposes for which they may be used; (7) charges, if any, for services rendered to stockholders or members; (8) the time, notice, and procedure for the annual election of officers; and (9) qualifications of stockholders or members, rules for withdrawing membership or transferring shares of stock, rules for expulsion of members, and method for determining value of members' interest in such cases. (Sec. 9, Ch. 109, S.L. 1935)

The board of directors consists of 5 to 9 members. Their terms of office, qualifications, and method of election may be prescribed either in the articles of incorporation or in the bylaws. The board elects one of the members or stockholders of the corporation to act as secretary-treasurer for a term of one year. The last-named official must be bonded for an amount set forth in the bylaws. No official or director may receive compensation except such per diem and expense allowance as may be voted by the members or stockholders at an annual or special meeting. (Sec. 6, Ch. 109, S.L. 1935, as amended by Sec. 2, Ch. 117, S.L. 1937)

Either the articles of incorporation or the bylaws may establish limitations on membership or stock ownership and may limit each member to but 1 vote regardless of amount of interest owned in the corporation or number of shares held. (Sec. 10, Ch. 109, S.L. 1935, as amended by Sec. 2, Ch. 123, S. L. 1941)

Use made of the mutual aid corporations act.- The total number of cooperatives and other corporations, which operate as tenure improvement associations, is not known, but a few examples illustrate some of the activities which have been attempted. An association was organized in Slope County to lease agricultural and grazing land from absentee owners for subleasing to members. Important parts of this plan were a proposed community pasture for the benefit of some of the members and a reorganization of operating unit boundaries to reduce fencing and operating costs. The association was to have been financed by FSA, but because the program depended upon the purchase of a few key tracts, the loan had to be disapproved. It is believed that the association has never actually operated.

The Hebron Mutual Aid Corporation in Williams County has been somewhat more successful. It leases about 2400 acres of county, Indian and state school land for use by its 11 members. It was financed originally by a small FSA loan. It operates in much the same way as a grazing association. In addition, the corporation owns a purebred bull for the use of its members. Because of a fuel shortage in this area in the fall of 1942, the corporation started a coal mining enterprise on some of its holdings. Machinery for this was rented from the Bureau of Reclamation and the enterprise was financed by a loan from a local credit union.

A third mutual aid corporation has been organized to assist development and settlement of the Buford-Trenton Wheeler-Case Irrigation Project in Williams County. Eventually, the land may be sold to member operators through the corporation, but for the immediate future, the corporation is leasing the land from the federal government and subleasing it to members. The Corporation has borrowed rehabilitation corporation funds to construct improvements on each farm unit, but shortages of materials have delayed this aspect of the project. A similar corporation may be incorporated to assist in the development of the Lewis and Clark Wheeler-Case Project in McAnzie County.

Organization of Tenure Improvement Associations Under General Cooperative Enabling Acts

Certain types of tenure improvement associations, at least, can be organized in the other 5 Great Plains States (Colorado, Kansas, Montana, South Dakota and Wyoming) under general cooperative or nonprofit corporation laws. As a general rule, tenure improvement associations cannot be incorporated under the so-called "standard cooperative marketing act", which most states have adopted, because they cannot qualify as to the purpose for which a cooperative marketing association may be formed. 2/

2/ The wording of the Kansas cooperative marketing act illustrates this point. A cooperative marketing 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, threshing, milling, 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. Nothing in this act shall authorize such association to engage in the banking business." (Sec. 17-1604, G.S.K. 1935) The wording of the marketing acts of Montana and some of the other states is almost identical.

This means that the right to form a tenure improvement association must be found, if at all, among the laws providing for consumer cooperatives and cooperative farming corporations. It should be remembered that these acts, although they are of a general nature, were adopted sometime before much thought had been given to tenure improvement associations. Consequently, it is only natural that some of them contain certain limitations and requirements with which certain types of tenure improvement associations would find it difficult, if not impossible, to comply.

The provisions of the various general cooperative acts which render them unadaptable for organizing tenure improvement associations include: (1) requirement of an excessive number of incorporators; (2) no provision for the nonstock type of organization; (3) excessive organizational fees or annual corporation license taxes; (4) restrictions on indebtedness; (5) cumbersome procedure for organization; and (6) wording which makes it doubtful whether a tenure improvement association can qualify as to purpose for which a cooperative may be formed. Consequently, before the attempt is made to file articles of incorporation, a careful legal analysis is necessary to determine whether the type of association contemplated is legally possible under the general laws of that particular state.

If it should become apparent that tenure improvement associations could perform a needed and useful function in any of these states, legislation to facilitate their organization might be desirable. This may take the form of a special act, as in Nebraska, or amendments to existing cooperative laws, as in North Dakota.

