

MINNESOTA STATUTES 1953 ANNOTATIONS

307.10 PRIVATE CEMETERIES

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tion because although the property is owned by the church, it is not at present used for church purposes. It is not exempt as a cemetery because it has not been laid out as such in the manner prescribed by statute. OAG May 26, 1950 (414-D-6).

307.10 VACATION; CHANGE OF NAME

Section 307.10 does not apply to a village cemetery plat which the village sought to vacate when the property was no longer needed as a cemetery. OAG April 6, 1948 (870-J).

Cemetery grounds owned in fee by a village may be sold when no longer needed for municipal purposes, and where all bodies have been removed therefrom. The village council having authority by law to cause a map or plat of the cemetery to be made and filed with the register of deeds may, by resolution, vacate the cemetery. OAG April 6, 1948 (870-J).

CHAPTER 308

CO-OPERATIVE ASSOCIATIONS

308.01 ORGANIZATION

HISTORY. 1870 c 29 s 1-4; GS 1878 c 34 s 155-158; GS 1894 s 2903-2906; 1897 c 351; RL 1905 s 3073, 3074; GS 1913 s 6479, 6482; GS 1923 s 7822, 7825; MS 1927 s 7822, 7825.

Farmers co-operatives and the federal income tax. 32 MLR 785.

The corporation in medicine; the medical co-operative. 35 MLR 373.

Patronage refund by co-operative organizations. 35 MLR 549.

Distribution of refunds by co-operatives. 35 MLR 555.

A de facto co-operative association, attempting to incorporate or reincorporate under chapter 308 and failing to comply therewith in all respects, may adopt articles of incorporation in their entirety under section 308.361 and thereby become a de jure corporation. OAG April 1, 1948 (93-A-1).

Where a co-operative association, organized under the provisions of chapter 308, was authorized to renew its corporate existence under Laws 1935, Chapter 116, but not under Laws 1933, Chapter 358, and adopted a resolution in conformity with the provisions of section 308.13, a renewal of its corporate existence for 20 years was accomplished. OAG May 14, 1947 (93-A-8).

308.02 CAPITAL; LIMIT OF INTEREST; SHARE

A member of an unincorporated voluntary association does not acquire a severable right to any of the association's property or funds but acquires merely the enjoyment of joint use of the funds and property so long as he continues a member; and members who withdraw singly or as a majority group lose their rights to the association property. *Liggett v Koivunen*, 227 M 114, 34 NW(2d) 345.

308.04 Repealed, 1943 c 317 s 1.

308.05 PERSONS AUTHORIZED TO ORGANIZE; PURPOSES; POWERS

HISTORY. 1919 c 382 s 1; 1921 c 23 s 1; 1923 c 326 s 1; MS 1927 s 7834; 1933 c 148 s 1; 1949 c 199 s 1.

An action by a member of a co-operative association conducting a commission business to restrain the co-operative from buying for its own account grain con-

signed to it for sale was not a "collusive action" merely because it was a friendly action. *Clinton v Farmers Union Terminal*, 223 M 253, 26 NW(2d) 117.

An association organized for the purpose of conducting agricultural, dairy, marketing, commission, or warehousing business upon a co-operative plan, may either engage in a pooling operation whereby proceeds after deduction of operating expenses are distributed among the members in proportion to their respective contributions to the pool, or may purchase products outright from its members paying them at the market price current at the time of delivery. *Elliott v Adeckes*, M, 59 NW(2d) 894.

Where a co-operative association was empowered to buy dairy and farm products, and the association's bylaw provided that patrons should be paid at least once a month, and oftener if the board of directors so ordered, for milk or cream delivered during the preceding period, the relationship between the association and its members and patrons from which it bought such products was one of purchaser and seller and the trustee in bankruptcy for the association was not entitled to recover from the members and patrons amounts paid for such products in excess of the difference between the gross receipts and the operating expense. *Elliott v Adeckes*, M, 59 NW(2d) 894.

Where a co-operative association is organized under Laws 1923, Chapter 326, the bylaws may not be amended at an annual meeting except upon notice thereof, which notice must inform the members of the exact text of the proposed change and this must appear on the printed ballot, if the vote is by mail. OAG April 24, 1953 (93-A-2).

The provision in the bylaws of a co-operative association organized under sections 308.05 to 308.18 which requires that the director be and remain a resident of the area served by the association is valid. OAG Jan. 21, 1949 (93-A-9).

The co-operative laws do not require distribution of net income to patrons on the basis of patronage with reference to any particular commodity. OAG June 11, 1952 (93-A-11).

A co-operative association may limit distribution of net income to members only. OAG Feb. 27, 1953 (93-A-11).

A co-operative association organized in Minnesota must maintain an office in Minnesota. It may hold an annual meeting outside the state in a place conveniently located within the area of the association. OAG April 7, 1953 (93-A-21).

No one other than a co-operative association may use the word "co-operative" as a part of a trade name. OAG June 11, 1952 (93-A-24).

The stockholders of a co-operative association are not ordinarily subject to unlimited liability and the creditors of a co-operative association do not ordinarily have recourse against its stockholders. Stockholders of a co-operative association are not ordinarily personally liable for its debts. OAG Jan. 31, 1952 (93-A-39).

A co-operative association may sell all its property upon the written consent of two-thirds of the holders of the voting stock. OAG Aug. 1, 1952 (93-A-47).

A co-operative rural telephone association may not discontinue its service to some of the public simply because they are not members of the association. Such service can be discontinued only for cause shown to the railroad and warehouse commission. OAG June 13, 1952 (93-B-33).

Merchants and manufacturers are not authorized to organize a co-operative trucking association under the provisions of section 308.05. OAG Nov. 19, 1946 (93-B-34).

308.06 INCORPORATION, DURATION

HISTORY. 1919 c 382 s 2; 1921 c 23 s 2; 1923 c 326 s 2; MS 1927 s 7835; 1941 c 114 s 2; 1943 c 438 s 1; 1949 c 199 s 2; 1953 c 16 s 1.

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308.061 COOPERATIVE ASSOCIATIONS

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Section 308.07 relates merely to the basis upon which directors may be nominated and elected at the annual meeting. It does not provide for their nomination or election at local meetings held for that purpose. There is no conflict between section 308.06 and section 308.07. If there was a conflict section 308.07, being the later enactment, would govern. OAG March 12, 1951 (93-A-9).

A co-operative association's reserve for permanent surplus required by statute may be called a patrons equity reserve. OAG Oct. 26, 1949 (93-A-11).

A co-operative association may limit the distribution of net income to members only. OAG Feb. 27, 1953 (93-A-11).

The exact date for holding an annual meeting must be stated in the articles of incorporation. OAG Oct. 27, 1953 (93-A-21).

A stockholder of a co-operative association retains his interest in allocated reserve and surplus even though he transfers his stock. OAG Jan. 5, 1953 (93-A-40).

308.061 PERPETUAL DURATION GRANTED

HISTORY. 1953 c 16 s 3.

308.062 CORPORATE EXISTENCE

HISTORY. 1953 c 16 s 4.

308.07 CAPITAL; LIMITS OF INTEREST; VOTE

HISTORY. Amended, 1949 c 199 s 3.

Under section 308.07, the book value of common stock in a co-operative association may be less than par, but cannot be greater than par if its articles provide that all earnings shall be distributed solely on the basis of patronage. Where the board of directors of an association cause a stockholder to surrender his common stock for the reason that he is no longer eligible to hold it, under the articles the stockholder as such has no property rights in any capital reserve, but upon surrender of his stock he retains the interest he has acquired in the capital reserve by reason of his patronage. OAG April 1, 1948 (93-A-38).

A member of a co-operative association may have his vote by ballot already mailed, counted, even though he is present at the meeting. OAG April 1, 1949 (93-D-21).

Section 308.07 permits voting by mail upon motions, resolutions, or amendments to articles, but makes no mention of voting by mail for directors. The section applicable to the election of directors is section 308.11. Directors are elected at the annual meeting in accordance with the provisions of the bylaws. OAG April 27, 1949 (93-A-9).

The amendments to sections 308.07 and 308.10 of the laws relating to co-operative associations are applicable to corporations organized before the adoption of the amendments; and a provision in the bylaws authorizing the association to purchase stock of members who do not patronize is valid. OAG Nov. 20, 1950 (93-A-2).

Section 308.07 merely relates to the basis upon which directors may be nominated and elected at the annual meeting. It does not provide for their nomination or election at local meetings held for that purpose. There is no conflict between section 308.06 and section 308.07. If there was a conflict section 308.07, being the later enactment, would govern. OAG March 12, 1951 (93-A-9).

308.09 STOCKHOLDERS MEETINGS; REGULAR AND SPECIAL

HISTORY. 1919 c 382 s 4; 1921 c 23 s 4; 1923 c 326 s 4; MS 1927 s 7837; 1947 c 61 s 1; 1947 c 354 s 1; 1949 c 157 s 1; 1949 c 199 s 4.

The provisions of section 308.15 must be fully complied with in amending articles of co-operative associations and section 308.09 is not applicable to meetings called for amendment of articles. OAG April 15, 1948 (93-A-21).

A co-operative association organized under sections 308.05 to 308.18 may do business in other states. OAG April 25, 1952 (93-A-47).

308.10 QUORUM

HISTORY. Amended, 1949 c 199 s 5.

The amendments to sections 308.07 and 308.10 are applicable to corporations organized before the adoption of the amendments; and a provision in the bylaws authorizing the association to purchase the stock of members who do not patronize is valid. OAG Nov. 20, 1950 (93-A-2).

Stockholders signature is not necessary for registration under section 308.10. OAG Jan. 2, 1953 (93-A-21).

308.11 DIRECTORS; OFFICERS

HISTORY. Amended, 1949 c 199 s 6.

Section 308.07 permits the voting by mail upon motions, resolutions, or amendments to articles, but makes no mention of voting by mail for directors. The section applicable to the election of directors is section 308.11. Directors are elected at the annual meeting in accordance with the provisions of the bylaws. OAG April 27, 1949 (93-A-9).

Stockholders of the co-operative association may remove a director or officer for cause and fill the vacancy caused by such removal; but the cause must be a legal one and not for arbitrary or capricious reasons. In calling the meeting the notice must contain the name of the director to be removed and for what cause. Decision of the stockholders is subject to review by the courts. A successor may be elected to a director who is removed or has died. OAG March 22, 1950 (93-A-9).

308.12 EARNINGS; RESERVE FUND; DISTRIBUTION

HISTORY. 1919 c 382 s 7; 1921 c 23 s 7; 1923 c 326 s 7; MS 1927 s 7840; 1941 c 114 s 4; 1949 c 199 s 7; 1953 c 16 s 2.

The board of directors of a co-operative association is required for the first two fiscal years to annually set aside as a patrons' equity reserve at least ten percent of the annual net income until the reserve equals 50 percent of the paid up capital. After having been built up to 50 percent, it cannot be reduced below that percentage. OAG Oct. 26, 1949 (93-A-11).

Reserve requirements are based upon total of paid up capital, including preferred stock. OAG Dec. 22, 1952 (93-A-37).

A stockholder in a co-operative association retains his interest in allocated reserve and surplus even though he transfers his stock. OAG Jan. 5, 1953 (93-A-40).

308.13 PROMOTION EXPENSE NOT TO BE INCURRED

HISTORY. 1919 c 382 s 9; 1921 c 23 s 9; 1923 c 326 s 8; GS 1923 s 7841; MS 1927 s 7841.

308.14 CERTAIN ASSOCIATIONS MAY COME WITHIN PROVISIONS

A two-thirds vote of those voting on a resolution for the dissolution of a co-operative association includes mail ballots. There is no special provision defining a quorum at such meeting. OAG Feb. 10, 1953 (93-A-10).

308.15 AMENDING ARTICLES OF INCORPORATION

A de facto co-operative association attempting to incorporate or re-incorporate under 308.05 et seq, but which failed to comply in all respects, may adopt articles of incorporation in their entirety under 308.361 and thereby become a de jure corporation. OAG April 21, 1948 (93-A-1).

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308.18 COOPERATIVE ASSOCIATIONS

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The board of directors of a co-operative association is not bound by a stockholders' petition, but may submit the provisions to a vote by the stockholders in any form the board deems proper. OAG April 27, 1948 (93-A-2).

Articles of incorporation of a co-operative association must be voted on and adopted as submitted and cannot be changed on the floor at the meeting. OAG April 7, 1948 (93-A-21).

The provisions of section 308.15 must be fully complied with in amending articles of co-operative associations and section 308.09 is not applicable to meetings called for amendment of articles. OAG April 15, 1948 (93-A-21).

Amendments to bylaws must be validly adopted by a majority of those voting in person and by mail. OAG March 31, 1953 (93-A-46).

308.18 APPLICATION

A co-operative association formed under the provisions of Laws 1923, Chapter 326, as amended, (coded as sections 308.05 to 308.18), and licensed as a commission merchant by the railroad and warehouse commission is exempt from the provisions of Laws 1917, Chapter 19, (sections 223.09 and 223.10), which forbids any individual or corporation doing business as a commission merchant from buying on its own account grain consigned to it for sale as such commission merchant. *Clinton v Farmers Union Assn.*, 223 M 253, 26 NW(2d) 117.

Where a co-operative association is organized under Laws 1923, Chapter 326, the bylaws may not be amended at an annual meeting except upon notice thereof, in which notice the members must be informed of the exact text of the proposed change and this must appear on the printed ballot if the vote is by mail. OAG April 24, 1953 (93-A-2).

The provision in the bylaws of a co-operative association organized under sections 308.05 to 308.18, which requires that the director be and remain a resident of the area served by the association is valid. OAG Jan. 21, 1949 (93-A-9).

308.19-308.282 Repealed, 1943 c 304 s 1.

308.29 POWERS EXTENDED

HISTORY. 1907 c 293 s 1; 1909 c 456 s 1; GS 1913 s 6487; 1919 c 82 s 1; GS 1923 s 7830; MS 1927 s 7830.

308.30 OFFICERS; BYLAWS; AMENDMENT OF ARTICLES

Where a matter of policy is not involved, proposed action requires only a majority vote; but any matter of policy requires the unanimous vote of the directors. OAG Feb. 10, 1947 (93-A-9).

308.33 Repealed, 1943 c 318 s 1.

308.34 MAY ENGAGE IN ANY LAWFUL ENTERPRISE

The repeal of section 308.33 and the amendment of section 308.34 by Laws 1943, Chapter 318, clearly indicates the need of the revision of chapter 308. 31 MLR 42.

308.361 DEFECTIVE ORGANIZATION

De facto corporations attempting to incorporate or re-incorporate under Laws 1919, Chapter 382, as amended by Laws 1921, Chapter 23, or Laws 1923, Chapter 326, which have not in all respects complied with the statutes, may under the provisions of Laws 1947, Chapter 513, adopt articles of incorporation in their entirety and thereupon become de jure corporations. OAG April 21, 1948 (93-A-1).

308.37 OWNING STOCK OF CERTAIN OTHER CORPORATIONS

HISTORY. 1927 c 25 s 1; MS 1927 s 7847-3.

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CORPORATIONS; SOCIAL, CHARITABLE 309.18-309.20

308.42 CO-OPERATIVE ASSOCIATION DEFINED

HISTORY. 1919 c 382 s 1; 1921 c 23 s 1; 1923 c 131 s 1; 1923 c 326 s 1; GS 1923 s 7834, 7848; MS 1927 s 7834, 7848; 1933 c 148; 1941 c 114 s 1.

A member of an unincorporated voluntary association does not acquire a severable right to any of the association's property or funds but acquires merely the enjoyment of joint use of the funds and property so long as he continues a member; and members who withdraw singly or as a majority group lose their rights to the association property. *Liggett v Koivunen*, 227 M 114, 34 NW(2d) 345.

308.43 RURAL ELECTRICS; LOSSES FROM USUAL INSURANCE RISKS

HISTORY. 1951 c 408 s 1.

CHAPTER 309.

CORPORATIONS; SOCIAL, CHARITABLE

309.01-309.09 Repealed, 1951 c 550 s 78; except for the saving clause affecting corporations which elect to reject the provisions of sections 317.01 to 317.25.

See section 317.69.

Annotations under repealed sections.

A corporation may be formed under M.S.A., Chapter 309, without consent of the village council; but the articles of incorporation cannot make it obligatory upon the mayor or other officer of the village to serve upon the board of directors, nor can the corporation obligate the city council in the event of the dissolution of the corporation to support physical assets thereof, subject to existing liens. OAG Feb. 18, 1948 (59-B-11).

Membership in a corporation is based on a contractual relationship involving assent so that lot owners cannot be made members of the corporation without any act on the part of such owners. OAG July 22, 1948 (102).

The corporation organized as a county historical society may accept gift of statue and a tract of land on which it will stand. OAG Jan. 13, 1948 (230).

The Scott county good seed association has the right to enter into a lease with Jordan baseball association permitting the latter association to use the grounds at any time they are not required for county fair purposes. OAG Nov. 9, 1949 (772-C-5).

The city of Sauk Centre may, under its charter as amended, lawfully use public funds for the establishment of a public hospital. Such purpose is a public purpose. A donation may be made of public funds and unneeded city real estate to a charitable institution for the purpose of operating a public hospital where the city acquires the right to have its inhabitants treated and cared for in the hospital on the same basis as other persons, and to have its indigent poor so cared for without discrimination. The contract is valid though the hospital is to be conducted by the Franciscan Sisters. OAG May 5, 1945 (1001-A).

309.10 NONPROFIT HOSPITAL SERVICE PLAN CORPORATIONS

HISTORY. 1941 c 53 s 1.

309.18-309.20 Repealed, 1951 c 550 s 78; except for the savings clause affecting corporations which elect to reject the provisions of section 317.01 to 317.25.

See section 317.69.