



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Department of Agriculture
Austin, Texas

Gentlemen: Attention: Mr. Charles E. Baughman

Opinion No. 0-2766

Re: Is the Department of Agriculture authorized to require that the provisions of the bonds furnished by employees of cooperative associations be uniform? And related questions.

Your recent request for an opinion of this Department upon the questions as are herein stated has been received.

We quote from your letter as follows:

"The question has been raised whether the bonds furnished to indemnify Cooperative Association should be uniform in wording relative to conditions. Please advise if this Department, under the above mentioned chapter, would be authorized to require that the provisions of the bonds furnished by such employees to the Association, be uniform.

"And if the Department would be authorized to require the bonding companies to use bond forms carrying such uniform provisions. Also, please advise whether the Department would be authorized to require a Cooperative to furnish this Department with a copy of the bond or bonds.

"We are attaching hereto copies of the Statute, also, copies of the By-laws. In case your answer should be in the affirmative, we would appreciate it very much if you would draw a form to be used by the

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bonding company, in the bonds furnished in the above connection."

We assume from your inquiry that you have reference to the bonds of officers, employees, and agents of corporations incorporated under the "Co-operative Marketing Act". Generally speaking, an association may be formed under the Co-operative Marketing Act by five or more persons engaged in the production of agricultural products or three or more associations to engage in any one or more of the activities specified in the Act. Generally, the organization is effected by a group of persons or organization committee, who may make many minor changes in the organic features of the incorporation, when authorized by the organization agreement, and a majority of whom may determine the propriety of completing the organization, at least where there is no dissent or objection on the part of the absentees. Articles of incorporation are required to be prepared, subscribed and acknowledged, and be filed in accordance with the general corporation laws, and an association which fails to incorporate is not entitled to the benefits of the Marketing Act. The statute further provides for the adoption of by-laws, the calling of meetings of members or stockholders, and the election and removal of officers and directors.

Article 5757, Vernon's Annotated Civil Statutes, requiring each and all officers, employees, and agents handling funds and property of the corporations created under the provisions of the Co-operative Marketing Act, reads as follows:

"Each and all officers, employees and agents, handling funds or property of the corporation created under the provisions of this Act, or any property or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest, or unlawful act on the part of such officers and employees and other acts as provided by the by-laws of the association. In case the officers and directors of any corporation authorized to be created under the provisions of this Act, shall fail to have all officers, employees and agents handling such funds or property, execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure, and which might have been recovered on said bond."

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It will be noted that Article 5757, supra, specifically provides that all officers, employees and agents handling funds or property of the corporation are required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest, or unlawful act on the part of such officers and employees and other acts as provided by the by-laws of the association. It is apparent that the main purpose of the above mentioned statute is to protect or save from loss or damage the funds or property of the corporation or any property or funds of any person placed under the control of or in the possession of the corporation. The only purpose of the above mentioned bond is to adequately protect or save from loss or damage the funds or property above mentioned, and if the bond accomplishes this purpose, the form of the bond is immaterial.

All public offices and officers are creatures of law. The powers and duties of public officers are defined and limited by law. By being defined and limited by law, we mean that the act of a public officer must be expressly authorized by law or implied therefrom. (22 R. C. L., page 555, Section 114.) It follows that the Department of Agriculture may make only such requirements and demands as they are authorized by law to make. (Ft. Cavalry Club Inc. v. Sheppard, 83 S. W. (2d) 660.) After a careful search of the pertinent statutes relative to the questions here involved, we are unable to find any statute that authorizes the Department of Agriculture to require that the provisions of the bonds furnished by the officers, employees and agents of the associations incorporated under the Co-operative Marketing Act to be uniform. Neither do we find any authority authorizing the Department of Agriculture to require the bonding companies to use bond forms carrying such uniform provisions. It is our further opinion that the Department of Agriculture is not authorized to require any association incorporated under the above mentioned Act to furnish the department with a copy of the bond or bonds required by Article 5757, supra.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED SEP 27, 1940

Gerald B. Mann
ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:BBB

APPROVED
OPINION
COMMITTEE
BY *BLW*
CHAIRMAN