

N.D.A.G. Letter to Kusler (April 9, 1992)

April 9, 1992

Honorable Jim Kusler
Secretary of State
State Capitol
600 E Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Kusler:

Thank you for your January 14, 1992, letter in which you inquire as to whether a cooperative association can continue to exist with a single member. You indicate that a cooperative association incorporated in your office in 1976 has experienced declining membership and that the membership has declined to a single member. You reference North Dakota Century Code (N.D.C.C.) ch. 10-15 and indicate further that you are unable to locate a citation defining the minimum number of members for a cooperative association.

As you are aware, N.D.C.C. ch. 10-15 governs the organization and operations of cooperative associations. My review of that chapter also indicates that it does not contain a provision defining the minimum number of members.

N.D.C.C. § 10-15-03 provides, in part: "Unless otherwise provided by its articles, a cooperative may: 1. Exist perpetually."

Consequently, unless the articles of association of a cooperative association provide for a limited period of existence, a cooperative association is granted perpetual existence.

N.D.C.C. § 10-15-15 addresses the subject of membership in a cooperative association. It provides, in pertinent part: "Provisions for qualifications, requirements, method of acceptance, terms, conditions, termination, and other incidents of membership shall be set forth in the bylaws." Therefore, the bylaws of a cooperative association may contain a provision defining the minimum number of members. However, in the absence of such a provision in the bylaws, a minimum number of members is not required under N.D.C.C. ch. 10-15.

The legislature did not enact a provision in N.D.C.C. ch. 10-15 specifying a minimum number of members for a cooperative association. It certainly could have done so. Furthermore, it is significant to note the language set forth at N.D.C.C. § 10-15-25(2):

"The number of directors shall not be less than five, provided that in a cooperative with less than fifty members, the number of directors shall not be less than three. However, the number of directors required of a cooperative

association shall never be greater than the number of members of the association. Subject to such limitation, the number shall be fixed in the articles, or if the articles so provide, in the bylaws."

N.D.C.C. § 10-15-25(2) (emphasis supplied). The underscored sentence, when considered in light of the first sentence requiring at least three directors, allows for a situation where there would be two or only one member of a cooperative association.

Based upon the foregoing, it is my opinion that a cooperative association may exist with only one member in the absence of a provision in its bylaws specifying some other minimum number of members. If this situation creates a problem for your office, you may want to consider proposing legislation next session to address this issue.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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