Recent Developments of Wisconsin Law on Co-operative Marketing

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An example of adaptation of legal principles to meet an economic situation is evidenced in the recent developments in the Wisconsin law of co-operating marketing.

In an article in the *Marquette Law Review* the historical development of co-operative marketing was traced from the organizing of the first co-operative association in 1803 down to the date of the article in 1928 when practically all the states had non-stock laws on their books. It was stated that: "The general purpose of all these non-stock laws was merely to allow co-operatives to organize under a special form of business unit. Very few of the newly passed statutes made any mention of public policy—very few of them intimated that the enabling law was to be protection against the attacks on subsequently organized pools because of restraint of trade."  

Even as late as 1928, it seems that co-operative associations were tolerated rather than encouraged. Obviously, if co-operative marketing were to be considered a business operated for profit it would find an insurmountable obstacle in the Wisconsin anti-trust laws and such associations would continue to come out second best in their constant struggle against the organized purchasing power of corporations and the "gentlemen's agreements" of independent buyers.

But agitation on the part of farmers' groups resulted in the passage of an exception to the anti-trust legislation and agricultural associations organized for the purpose of mutual help are excluded from the above law.

In addition to exempting co-operative groups from operation of the anti-trust law the Wisconsin legislature went a step farther and affirmed

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3. Wis. Stat. (1937) § 133.01: "Every contact or combination in the nature of a trust or conspiracy in restraint of trade or commerce is hereby declared illegal. Every combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, to be produced or sold therein or constituting a subject of trade or commerce therein, or which combination, conspiracy, trust, pool, agreement or contract shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure in which its price to the public shall be in any manner controlled or established, is hereby declared an illegal restraint of trade."
4. Wis. Stat. (1937) § 133.05.
tively declared the policy of co-operative marketing to be adopted in this state.\(^5\)

In an effort to encourage the co-operative movement the legislature has added to the curriculum of every high school and vocational school\(^6\) and in training courses for teachers at the University of Wisconsin, the state teachers' colleges, and the county normal schools\(^7\) adequate instruction in co-operative marketing and consumer's co-operatives. The various co-operative associations may also, in their contracts with members, provide for a certain percentage of "profits" to be set aside for a promotional fund to give financial stability to the centralized system of the co-operative marketing of dairy products.\(^8\) This right to retain a certain percentage of the "profits" has been extended to include the creation of a stabilization fund, and for a fund to be spent for educational purposes.\(^9\) The legislature has gone so far as to provide for state contribution to these promotional funds.\(^10\)

The above statutes might be classed under the general heading of "moral support" but the provisions which made co-operative organization possible are contained in section 185.08, Wis. Stat. (1937). To paraphrase, the various subdivisions provide that: (1) A co-operative association\(^11\) shall have all the powers of a corporation, except where the general corporation law expressly exempts such associations, or where the general corporation laws are opposed to or inconsistent with the provisions of this chapter.\(^12\) (2) Contracts between an association and its members whereby the member agrees to buy or sell through the association shall, if otherwise lawful, be valid. Such contracts, however, are limited to a duration of five years and may not be self-renewing for periods exceeding five years each. (3) Such contracts may stipulate liquidated damages not to exceed thirty per cent of the value of the products which are the subject of the breach. (4) The association may get an injunction to prevent the breach or further breach of contracts with its members. (5) The association may file with the register of deeds the contract with its members, and this shall

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\(^5\) **Wis. Stat.** (1937) § 94.15: "The history of the farm marketing problem in the state and nation, as well as throughout the world, points to a solution chiefly through co-operative marketing efforts of producers. It is, hence, declared to be the policy of this state, in advancing the general good and welfare, to assist in the organization and development of co-operative associations for production and marketing purposes along lines of dairy and other farm products."

\(^6\) **Wis. Stat.** (1937) § 40.22(11) (a).

\(^7\) **Wis. Stat.** (1937) § 40.22(12).

\(^8\) **Wis. Stat.** (1937) § 94.17.

\(^9\) **Wis. Stat.** (1937) § 94.19.

\(^10\) **Wis. Stat.** (1937) § 94.18.

\(^11\) (a) Each member has one vote and only one vote. (b) Rate of dividends limited to eight per cent. (c) Net proceeds are distributed to the patrons in proportion to the volume of business transacted by said patrons with the co-operative.

\(^12\) **Wis. Stat.** (1937) § 185.20.
serve as constructive notice to the prospective purchasers. No title of any kind or nature shall pass to purchasers other than the association which may recover the possession of such property from any and all such other parties or from any party in whose possession it may be found. (6) Where such contract exists between an association and a member, any person who, with knowledge or notice of the contract, induces or attempts to induce a breach shall be liable to the aggrieved party for damages. (7) Filing as provided in (5) constitutes a notice. (8) This sub-section makes clear the legislative intent. (9) The proper place of trial in actions for or against such associations is in the county where such association has its principal office. (10) Any corporation discriminating against any co-operative association is subject to having its charter vacated or its license revoked.

The first case to arise under the statute clearly upheld the legislative intent.13 A group of dairy farmers united to form a co-operative dairy association. Each farmer who became a member of the association contracted to sell the milk produced on his farm exclusively to the co-operative dairy. The contract between the co-operative and its members, together with the sworn list of the members of the co-operative, was filed as prescribed by statute. The defendant purchased milk from members of the co-operative association. In an action by the plaintiff co-operative, the defendant was enjoined from accepting milk from co-operative members, and the plaintiff was awarded damages for purchases made by defendant from members of the co-operative. In arriving at this disposition, the court held that contracts between a co-operative association and its members, although lacking in mutuality, were valid. Further, it was said that when a contract between a co-operative and its members is filed, such contract becomes binding on the parties and is constructive notice on anyone doing business with members of the co-operative. In the same case the validity of the statute which prohibits the transfer to third persons of title to products of members of co-operative associations after filing the contract and list of members was also upheld.

In another case14 a defendant purchased live stock from a member of the plaintiff co-operative. The plaintiff was granted an injunction enjoining defendant from interfering with plaintiff's members, and the plaintiff was also granted damages for such past interference. The marketing of livestock also comes within this section and a contract filed as provided vests an interest in the live stock and not merely in the proceeds thereof. Each member of the co-operative agreed to

market all of his hogs, calves, sheep, and cattle through the association, except such live stock as was sold for home consumption, breeding, and dairy purposes. Later in another decision the court held that contracts for the sale of cheese also come within the act. Sub-section nine which states that the proper place of trial for all actions for or against any co-operative association shall be in the county where the association has its office was also held to be valid.

The courts seem eager to enforce contracts made by co-operatives with their members. In a case where a co-operative dairy had contracted for the purchase of milk with the plaintiff's father, the plaintiff was granted an injunction restraining the co-operative from interfering with his dealing with other creameries only after the evidence clearly showed that at the time of the contract and at all times since the plaintiff had title to the cows which produced the milk which allegedly was the subject of the contract. Where a producer informed a cattle dealer that the producer's membership in a co-operative had terminated, when actually it had not, and the cattle dealer failed to investigate, the court permanently enjoined the cattle dealer from attempting to purchase or interfere with members of the co-operative shipping association. The co-operative was also granted reasonable damages for injury sustained by such interference from the cattle dealer.

The last decade has witnessed a crystallization of legal principles in the field of co-operative marketing. Today, even the term "co-operative" is reserved as a title of distinction, it being a misdemeanor for other associations not authorized to use that term.

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18 Neillsville Shipping Ass'n. v. Lastofka, 225 Wis. 350, 274 N.W. 280 (1937).