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University of Arkansas School of Law

NatAgLaw@uark.edu ☎ (479) 575-7646

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**Selective Issues Facing Cooperatives: Can  
the Customer Continue to be the Company?**

by

Wendy Moser

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# SELECTIVE ISSUES FACING COOPERATIVES: CAN THE CUSTOMER CONTINUE TO BE THE COMPANY?

## INTRODUCTION

One of the most significant stories in the history of American agriculture is that of the farmer-owned cooperative.<sup>1</sup> In less than 200 years, the cooperative idea has evolved into the nearly 6000 agricultural cooperatives which meet the marketing and supply needs of farmers of the 1980's.<sup>2</sup> This article briefly examines the history of cooperatives, current issues facing cooperatives and some proposed answers to the question of cooperative survival.

## COOPERATIVE: DEFINITION AND HISTORY

A cooperative is an enterprise or organization owned by and operated for the benefit of those using its services.<sup>3</sup> Being voluntarily owned and maintained, the cooperative operates as a democratic business with each member having one vote in the company's operation.<sup>4</sup> Earnings are returned to the members in proportion to the amount of business they do with the cooperatives.<sup>5</sup>

Generally organized as a non-profit corporation under state cooperative association statutes,<sup>6</sup> the cooperative has become a vital part of the free enterprise system. Viewed as an off-farm extension of the farm business, the cooperative allows a group of farmers, small in size and large in number, to obtain market power comparable to other market participants who are large in size and small in number.<sup>7</sup> Cooperatives may also assure farmers of goods and services not otherwise available, or not at a reasonable cost.<sup>8</sup>

Much of the credit for developing the cooperative idea into a successful organization goes to the Rockdale Society of Equitable Pioneers, one of several consumer groups developed in England during the early nineteenth century. In 1844, this group of textile workers, victimized by the industrial revolution, poverty, and unemployment, sought to supply their members with the necessities of life at affordable prices.<sup>9</sup> Their cooperative structure, based on the guiding principles of open membership, democratic control, members'

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1. See generally M. SCHAARS, COOPERATIVES, PRINCIPLES AND PRACTICES (1971) [hereinafter cited as SCHAARS]; K. MEYER, D. PEDERSON, N. THORSON & J. DAVIDSON, JR., AGRICULTURAL LAW CASES AND MATERIALS (1985) [hereinafter cited as AGRICULTURAL LAW]; F. EVANS & E. STOKDYK, THE LAW OF AGRICULTURAL COOPERATIVE MARKETING (1937).

2. OFFICE OF INFORMATION, U.S. DEP'T OF AGRIC., SELECTED SPEECHES AND NEWS RELEASES, FARMER COOPERATIVE BUSINESS VOLUME DROPS, MARGINS UP 16 (Aug. 31, 1984).

3. WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 184 (1986).

4. SCHAARS, *supra* note 1, at 7-8.

5. *Id.*

6. All states have cooperative statutes. See, e.g., S.D.C.L. §§ 47-15 through 47-21 (1983).

7. FEDERAL MARKETING PROGRAMS IN AGRICULTURE: ISSUES AND OPTIONS 200 (W. Armbruster, D. Henderson & R. Knutson ed. 1983) [hereinafter cited as FEDERAL MARKETING PROGRAMS].

8. *Id.*

9. SCHAARS, *supra* note 1, at 68.

capital, patronage dividends and cash trading, led to the successful operation of the Rockdale store.<sup>10</sup> Throughout the industrial revolution, the cooperative idea and Rockdalian principles were adopted by many as an attempt to alleviate the dreadful working and living conditions of that time.

The cooperative idea moved to the United States in the middle of the nineteenth century. Various farm organizations, beginning with the National Grange in 1867, the National Farmers Union in 1910 and the American Farm Bureau soon thereafter, promoted the use of cooperatives by farm operators.<sup>11</sup> These organizations were also instrumental in the passing of federal legislation which permitted farmers to organize without violating the anti-trust provisions of the federal Sherman Act of 1890.<sup>12</sup>

The first legislation to protect the organizational and marketing activities of farmers was Section Six of the Clayton Act of 1914;<sup>13</sup> the second was the Capper-Volstead Act of 1922.<sup>14</sup> The Clayton Act permitted farmers to organize non-stock, non-profit agricultural organizations and to operate and carry out the legitimate objectives of the cooperative without being subject to the antitrust laws:

Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of . . . agricultural . . . organizations instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.<sup>15</sup>

Congress enacted the Capper-Volstead Act in order to include cooperatives issuing stock within the immunity of the Clayton Act, to outline the legitimate objectives of agricultural cooperatives and to clarify the Clayton Act exemption provided to farmers from the antitrust laws.<sup>16</sup> In Section One, Congress gave meaning to the undefined terms "operation" and "legitimate objects" used in section Six of the Clayton Act by permitting farmers to have common marketing agencies and to make the contracts and agreements necessary to perform this collective activity.<sup>17</sup> Section Two allowed the Secretary of Agriculture to use discretion in ordering the association "to cease and desist from monopolization or restraint of trade" when ". . . such association monopolizes or restrains trade . . . to such an extent that the prices of any agricultural product is unduly enhanced thereby. . . ."<sup>18</sup>

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10. *Id.* at 69.

11. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 201.

12. Sherman Antitrust Act, ch. 647, § 1, 26 Stat. 209 (1890) (codified at 15 U.S.C. §§ 1-7 (1983)).

13. Clayton Act, ch. 323, § 6, 38 Stat. 730 (1914) (codified at 15 U.S.C. § 17 (1983)).

14. Capper-Volstead Act, ch. 57, §§ 1-2, 42 Stat. 388 (1922) (codified at 7 U.S.C. §§ 291-92 (1983)).

15. 15 U.S.C. § 17 (1983).

16. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 202.

17. 7 U.S.C. § 291 (1983); *see also* FEDERAL MARKETING PROGRAMS, *supra* note 7, at 202.

18. 7 U.S.C. § 292 (1983); *see also* FEDERAL MARKETING PROGRAMS, *supra* note 7, at 202.

Surrounding the passage of this legislation was the emphasis on organizing commodity cooperatives strong enough to control prices.<sup>19</sup> By 1925, a new school of competitive thought arose, emphasizing marketing efficiency and the procompetitive impact of cooperatives operating in a free enterprise system.<sup>20</sup> As a reaction to this new school of thought, the Cooperative Marketing Act of 1926<sup>21</sup> was passed, emphasizing the importance of increased research and education in building strong, effective cooperative organizations.<sup>22</sup> Following the directive of this Act, the United States Department of Agriculture (USDA) formed a Division of Cooperative Marketing to provide for the collection and dissemination of relevant cooperative information, to provide education about cooperative principles and practices and to advise the Secretary of Agriculture on cooperative-related matters.<sup>23</sup>

The Agricultural Marketing Act of 1929<sup>24</sup> and the Agricultural Marketing Agreements Act of 1937<sup>25</sup> provided further national support of cooperatives. The 1929 Act provided for a Federal Farm Board and a \$500 million revolving fund to make loans to cooperatives, to stabilize farm prices and to assist cooperatives generally.<sup>26</sup> The 1937 Act stated how and when cooperatives can act for individual farmers to provide a better means of orderly marketing for producers.<sup>27</sup>

Many state statutes affecting cooperatives have been enacted.<sup>28</sup> In some instances, the state legislation has served as a forerunner to national legislation.<sup>29</sup> For example, state laws forbidding processor, packer or handler discrimination against grower's organizational efforts led to the enactment of the Agricultural Fair Practices Act of 1967.<sup>30</sup> This Act reaffirmed producers' rights to organize for bargaining or marketing purposes and provided penalties for those who interfered with these rights.<sup>31</sup>

There is evidence that cooperatives play a vital role in today's agriculture.

19. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 202. Single commodity marketing cooperatives were recommended by Aaron Sapiro, a dynamic leader from California in 1915. The cooperatives would be restricted to marketing a single commodity wherein farmers were required to sign long-term marketing contracts. The products were pooled to achieve large market control over a single commodity. *Id.*

20. *Id.* The competitive yardstick school of cooperative thought was advocated by Professor E.G. Nourse in contrast to the Sapiro concept of market dominance. *Id.*

21. Cooperative Marketing Act of 1926, ch. 725, §§ 1-7, 44 Stat. 802 (1926) (codified at 7 U.S.C. §§ 451-457 (1983)).

22. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 203.

23. *Id.* In 1933, the Division of Cooperative Marketing was renamed the Cooperative Research and Service Division. In 1953, the division was elevated to agency status as the Farmer Cooperative Service. The agency was renamed the Agricultural Cooperative Service in 1980. *Id.*

24. Agricultural Marketing Act of 1929, ch. 24, § 1, 46 Stat. 11 (1929) (codified at 12 U.S.C. § 1141 (1982)).

25. Agricultural Marketing Agreements Act of 1937, ch. 296, § 6, 50 Stat. 249 (1937) (codified at 7 U.S.C. §§ 671-674 (1983)).

26. SCHAARS, *supra* note 1, at 60.

27. *Id.* at 61.

28. *Id.*

29. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 204.

30. Agricultural Fair Practices Act of 1967, Pub. L. No. 90-288, § 2, 82 Stat. 93 (1968) (codified at 7 U.S.C. §§ 2301-2306 (1983)).

31. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 204.

Land O' Lakes butter, Sunkist oranges, Sunmaid raisins, Ocean Spray cranberries and Welch's grape juice, all products of agriculture cooperatives, are familiar names to American consumers.<sup>32</sup> Farmland, Agway and Cenex are familiar cooperatives to farmers and other agribusiness professionals.<sup>33</sup> A study conducted by the International Dairy Federation showed that in a group of twenty countries, collectively providing sixty percent of the world's total milk supplies, up to eighty-six percent of the milk was marketed through producer cooperatives.<sup>34</sup> Robert Bergland, former United States Secretary of Agriculture, world trade salesman for a major United States cooperative, and current president of the National Rural Electric Cooperative Association, may have best highlighted the importance of cooperatives when he stated that cooperatives' niche in life is to assume ". . . certain responsibilities, functions, and tasks giant companies of this world won't undertake. . . ."<sup>35</sup>

### ISSUES FACING COOPERATIVES

Cooperatives are a business, and, as such, face the same issues as other businesses. Due to their cooperative status, however, cooperatives also face issues peculiar and distinct from the ordinary business corporation. First, because cooperatives are based on the democratic principle of one man, one vote, cooperatives need to deal with the problems inherent in maintaining member control when large membership is necessary for acquiring market power. Secondly, equity redemption is of major concern to a cooperative because the capital invested by a member patron does not represent a permanent investment in the cooperative. Third, changes in how the courts define a "corporation operating on a cooperative basis" push questions of taxation to the forefront of cooperative concerns. Fourth, ongoing judicial interpretation of the antitrust laws resulting in a growing body of case law warrants constant cooperative attention. Finally, since the success of cooperatives appears to be tied to the changes in the farm community, the current farm crisis and the need for rural development presents a major issue which cooperatives need to address.

#### *Member Control versus Market Effectiveness*

The simple annual meeting or assembly of the original small cooperatives where every member was a participant in all key business decisions is almost a thing of the past. Because today's farmer supplies produce for national and international markets rather than just local markets, many cooperatives have established regional, national and international contacts in order to compete in

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32. AGRICULTURAL LAW, *supra* note 1, at 573-74.

33. *Id.* at 574.

34. Empson, *Large Dairy Cooperatives Dominate in Major Milk Producing Countries*, FARMER COOPS. 12 (May 1985).

35. Duffey, *Reach Beyond Shores, Share Experience with Emerging Countries: Bergland*, FARMER COOPS. 18 (July 1985).

these markets.<sup>36</sup> Membership participation in and control of such large organizations are a problem.<sup>37</sup> In turn, the small cooperatives that have chosen to compete at only the regional level are faced with less market effectiveness.<sup>38</sup> Some larger cooperatives use a two or three-tiered system of membership participation in order to preserve member control. For example, Associated Milk Producers, Inc., (AMPI), the largest dairy cooperative in the United States and the world, operates on a regional basis.<sup>39</sup> Each of its three regions has an advisory board and one director named to the main board for every 1000 members.<sup>40</sup> Lack of participation difficulties are overcome by membership or public relations departments as well as regular circulation of literature to keep members interested and informed.<sup>41</sup>

Whether large or small, a cooperative needs to recognize the importance of member control. Because a cooperative is a voluntary association, an essential binding agent is the one-member, one-vote democratic principle.<sup>42</sup> While cooperatives continue to expand to increase their market effectiveness, member control must remain a priority concern.

### *Equity Redemption*

The member-patron of a cooperative is also a member-investor. It is the patron who provides the capital to finance the operation of the cooperative. Before any dividends are distributed to the patron, a portion is withheld as reserve for future financing, or improved or additional services.<sup>43</sup> About two-thirds of all farmer cooperatives use what is known as a "revolving fund" system.<sup>44</sup> As long as a farmer is a patron of the cooperative, his capital is used for operation of the cooperative.<sup>45</sup> When the farmer chooses to end his patronage, his capital is "revolved" out of the system.<sup>46</sup>

Disputes arise when both the farmer and the cooperative are in need of capital.<sup>47</sup> When a farmer needs capital for farm operating expenses, an increased amount returned through the patronage refund is desirable. To the cooperative, however, increasing the amount of the patronage refund decreases the amount retained by the cooperatives for its operating expenses. A cooperative that wants to lessen the chances of conflict should have a clearly established plan for member repayment in its articles of incorporation or in its bylaws. Courts have held that patrons' rights depend not only upon applica-

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36. Empson, *supra* note 34, at 12-14.

37. *Id.* at 15.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. Ingalsbe, *Lack of Education at Heart of Debate Over Principles*, FARMER COOPS. 16 (Oct. 1985).

43. Note, *The Patronage Refund*, 35 MINN. L. REV. 549, 550-55 (1951).

44. SCHAARS, *supra* note 4, at 32.

45. Note, *supra* note 43, at 550.

46. *Id.*

47. See AGRICULTURAL LAW, *supra* note 1, at 605.

ble state statutes but also upon the articles and bylaws of such associations.<sup>48</sup>

### Taxation

Net margins which are distributed or allocated to patrons on the basis of their business with the cooperative are not taxable income to the cooperative.<sup>49</sup> This single-tax system reflects the public policymaker's acknowledgment that a cooperative provides services to its members "at cost" rather than generating earnings for itself or producing significant benefits to outside investors.<sup>50</sup>

Until 1978, a cooperative was clearly required to do at least fifty percent of its business with member-patrons in order to be a "corporation operating on a cooperative basis" and qualified to deduct patronage refunds under Subchapter T of the Code.<sup>51</sup> Some courts have decided that deductions for patronage refunds are based on the way income is distributed to patrons, not the organization's general status.<sup>52</sup> If income is not refunded to patrons, it is taxed as ordinary corporate income.<sup>53</sup> If refunded on a patronage basis, the cooperative is entitled to a deduction.<sup>54</sup>

Legislation which seeks to change the tax status of cooperatives is often introduced due to several misconceptions about the tax treatment of cooperatives. The first misconception is that cooperatives do not pay taxes when, in fact, they do. Because Section 521 of the Internal Revenue Code, which permits some farmer cooperatives to have additional deductions, is located in the "Exempt Organizations" division of the Code, people who are unfamiliar with cooperatives may form the impression that all cooperatives, even those not eligible for Section 521 deductions, are tax exempt. These people are highly susceptible to arguments about cooperatives enjoying unfair tax advantages. Cooperatives should attempt to have Section 521 moved to a different location within the Code in an attempt to dispell this misconception.<sup>55</sup>

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48. See, e.g., *Houck v. Birmingham*, 217 Ark. 449, 230 S.W.2d 952 (1950) (articles of incorporation); *Lake Region Packing Ass'n v. Furze*, 327 So. 2d 212 (Fla. 1976) (where the articles of incorporation and bylaws of an agricultural cooperative provide for a distribution of retained, excess reserves to former members only at the discretion of the board of directors, a court may not intervene to cause such distribution in the absence of a showing of abuse of discretion, fraud, breach of trust or illegality on the part of such directors); *Avon Gin Co. v. Bond*, 198 Miss. 197, 22 So. 2d 362 (1945) (statutes); *Lambert v. Fisherman's Dock Coop., Inc.*, 115 N.J. Super. 424, 280 A.2d 193 (1971) (bylaws); *Evanenko v. Farmers Union Elevator*, 191 N.W.2d 258, 260 (N.D. 1971) (bylaws and articles of a cooperative constitute a contract between the individual patron and the cooperative—must be read in conjunction with state law to determine patrons' rights).

49. Frederick, *Explaining Tax Treatment of Cooperatives Requires Careful Use of Proper Terms*, FARMER COOPS., 14 (Aug. 1985).

50. *Id.*

51. Rev. Rul. 72-602, 1972-2 C.B. 511.

52. *Conway County Farmers Ass'n v. United States*, 588 F.2d 592, 600 (8th Cir. 1978) (first rejection of Rev. Rul. 72-602). Since then, two courts added their weight to that decision in *Columbus Fruit and Vegetable Coop. Ass'n v. United States*, 7 Cl. Ct. 561 (1985) and *Geauga Landmark, Inc. v. United States*. — F. Supp. — (N.D. Ohio 1985) (reported in *Legal Corner*, FARMERS COOPS. 23 (Aug. 1985)).

53. *Conway County*, 588 F.2d 592 (8th Cir. 1978); Frederick, *supra* note 49.

54. *Id.*

55. Frederick, *supra* note 49, at 14-15.

A second misconception arises as a result of inaccurate terminology used in the Code. The Code uses the term "dividend" rather than "refund" when referring to the deductible returns to patrons.<sup>56</sup> Under existing law, most dividends are subject to double taxation.<sup>57</sup> Thus, anyone familiar with taxable dividends may inaccurately conclude that cooperatives do not have to pay tax on dividends while all other businesses do. In fact, cooperatives do not have dividends, but rather distributions to owners based on investment.<sup>58</sup> Cooperatives make refunds in an attempt to adjust the total charge for the goods or services provided back to cost.<sup>59</sup> Cooperatives need to actively support Code changes in terminology or education of those persons with these misconceptions.

### *Cooperatives and Antitrust*

During the fifty years following passage of the Capper-Volstead Act, cooperative growth and business practices were relatively uncontested with respect to antitrust concerns.<sup>60</sup> Four major Supreme Court cases<sup>61</sup> clarified the range of permitting activities under Section One of Capper-Volstead but charges of price-fixing and monopolization were practically nonexistent.

In the early 1970's, rapid food price inflation combined with size increases of cooperatives through mergers and common marketing agencies caused a stir amongst the Federal Trade Commission and the Department of Justice.<sup>62</sup> The fundamental issues surrounding cooperative antitrust were the nature of the exemption under Section One of the Capper-Volstead and enforcement of the antitrust provision under Section Two.<sup>63</sup>

The first judicial approval of inter-cooperative agreements was handed down in *Treasure Valley Potato Bargaining Association v. Ore-Ida Foods, Inc.*<sup>64</sup> The Court held that associations may act together in marketing and make the necessary contracts to accomplish their legitimate purpose without violating Section One of the Capper-Volstead.<sup>65</sup>

The nature of the exemption under Section One is also affected by remedies available to a cooperative whose Capper-Volstead guarantees have been violated. For example, under the Capper-Volstead Act, farmers are allowed to bargain collectively as members of cooperatives.<sup>66</sup> Instances of processor discrimination against those who actively participate in bargaining led to the

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56. *Id.* at 15.

57. *Id.*

58. *Id.*

59. *Id.*

60. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 223.

61. *Case-Swayne Co. v. Sunkist Growers, Inc.*, 389 U.S. 384 (1967); *Sunkist Growers, Inc. v. Winckler & Smith Citrus Prods. Co.*, 370 U.S. 19 (1962); *Maryland and Virginia Milk Producers, Ass'n v. United States*, 362 U.S. 458 (1960); and *United States v. Borden Co.*, 308 U.S. 188 (1939).

62. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 224.

63. *Id.*

64. 497 F.2d 203 (9th Cir. 1974), *cert. denied*, 419 U.S. 999 (1974).

65. 497 F.2d at 214.

66. 7 U.S.C. § 291 (1983).

enactment of the Agricultural Fair Practices Act (AFPA)<sup>67</sup> which makes such discrimination illegal. The AFPA, however, also included a disclaimer clause which gave processors the right to discriminate for any reason other than cooperative membership.<sup>68</sup> In addition, the processor was not required to deal with the cooperative or even to bargain in good faith.<sup>69</sup>

State legislation has attempted to provide a remedy for these loopholes in the national law.<sup>70</sup> The attempt by the Michigan Legislature was invalidated by the United States Supreme Court in *Michigan Canners and Freezers Association, Inc. v. Agricultural Marketing and Bargaining Board*.<sup>71</sup> The Court found that the Michigan act violated the federal act's protection of a farmer's right not to join or bargain through a cooperative.<sup>72</sup> Because the Court did not rule on the issue of whether a processor was guaranteed the right to bargain directly with individual producers who are members of bargaining associations, the cooperatives' bargaining position is still governed by the loopholes of the AFPA. Cooperatives should encourage amendments to the national legislation which eliminates the loopholes while staying within the antitrust provisions applicable to all businesses.

The cooperative activity that is exempt under Section One of Capper-Volstead impacts upon the enforcement provisions of Section Two. The Secretary of Agriculture has the responsibility to enjoin the cooperative from undue price enhancement through monopolization or restraint of trade.<sup>73</sup> No secretary has brought a charge of undue price enhancement since the Capper-Volstead Act was passed.<sup>74</sup> The danger to cooperatives lies in the fact that if the Secretary is incapable or unwilling to pursue enforcement, then other members of the federal government, who may not be receptive or sympathetic to cooperative principles, will assume the responsibility of enforcement.<sup>75</sup> Cooperatives should therefore encourage the Secretary of Agriculture to define undue price enhancement and delineate the standards acceptable under the Capper-Volstead provision.

### *Farm Crisis and Need for Rural Development*

Some farm leaders feel that "actual collapse of the rural economy is not an exaggeration of the possible results of current farm policy direction."<sup>76</sup> Reduction in farm income, high interest rates, declining land values, increased foreign production and competition, below cost of production market prices

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67. *Id.* at §§ 2301-2306.

68. *Id.* at § 2304.

69. *Id.*

70. Mich. Comp. Laws § 290.701 (1982) (also referred to as Michigan's Agricultural Marketing and Bargaining Act).

71. 467 U.S. 461 (1984).

72. *Id.*

73. 7 U.S.C. § 292 (1983).

74. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 225.

75. *Id.*

76. S.D. Union Farmer, Sept.-Oct. 1985, at 3, col. 3 (NFU Executive Committee members in emergency meeting with Agricultural Secretary John Block).

and increased farm expenses are all factors which have contributed to the "crisis" state of the American farmer.<sup>77</sup> Cooperatives are comprised of farmers. When those farmers are gone, the need for farm cooperatives is also gone. Because of this factor, cooperatives have a valid interest in fighting for the survival of the small family farmer. Emphasis should be placed on small family farmers for several reasons: (1) a corporation which owns thousands of acres has the capital and necessary market power to deal directly with handlers and processors, thus bypassing any need for a cooperative; (2) the family farm continues to be the best choice in terms of efficient production, care of land and water resources and quality of life in rural communities,<sup>78</sup> all of which are important considerations for farm cooperatives; and (3) keeping the nation's farm land in the hands of a single family unit will help insure that the nation's food supply will remain at an acceptable cost level for the American consumer.<sup>79</sup>

Cooperatives need to act, not react. As they are in an ideal position to assess local needs, cooperatives must foster rural growth and job and career opportunities. Considering the current farm crisis, there are obviously needs and services that no other businesses are meeting or providing. Cooperatives can take shelter in their traditional roles, leaving their fate in others' hands, or choose the alternative and strike out in new directions, drawing on modern technology, creative thinking and sound business practices.

#### PROPOSED ANSWERS FOR SURVIVAL

Several speakers during the 1985 National Institute on Cooperative Education at Kansas State University suggested self-help methods to insure cooperative survival.<sup>80</sup> Keynote speaker George Steele called for strategies of mind, money and membership.<sup>81</sup> Steele suggested using modern versions of brainstorming techniques to find creative solutions to today's problems.<sup>82</sup> Because cooperatives are businesses, they succeed if they can secure adequate capital. Seeking methods for attracting capital from the investing public or sharing capital obligations with other businesses were suggested as alternatives to current cooperative practices.<sup>83</sup> From a business standpoint, these suggestions are not new or novel. Rather, the suggestions represent sound business

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77. See generally *Cenex Board Drafts Farm Policy Statement*, S.D. Union Farmer Sept.-Oct., 1985, at 15, col. 1.; *Farm Credit Study Details Decline in Agricultural Land Values*, *id.* at 21, col. 1.

78. 1985 Policy of Nat'l Farmers Union, adopted by delegates to the 83rd Annual Convention in Phoenix, Ariz., Mar. 3-6, 1985.

79. Long Term Purposes and 1984-85 Action Program of S.D. Farmer Union, adopted by delegates to the 69th Annual Convention in Huron, S.D., Oct. 11-13, 1984.

80. "Strategies for Strength" *Demand Reexamining Comfortable Traditions*, FARMERS COOPS. 21-28 (Sept. 1985).

81. *Id.* Steele is a farmer, former chairman and President of Agway, Inc., a cooperative director for 37 years, an American Institute of Cooperatives trustee and a member of the Federal Farm Credit Board.

82. *Id.*

83. *Id.*

practices which should be used by cooperatives all the time, not just when their survival is being questioned.

Both Steele and Fred Sobering<sup>84</sup> recommended that cooperatives needed to identify a new set of philosophies, principles, policies and practices reflective of the 1980's rather than those which were effective for the Rockdale weavers in the 1840's.<sup>85</sup> The answers to the question "Why cooperatives?" will identify the philosophy behind the creation of cooperatives and legislation in support of family farmers.<sup>86</sup> Cooperatives provided a practical approach to dealing with the imbalance of market power.<sup>87</sup> In addition, cooperatives served as a yardstick by which members could evaluate the performance of other firms in the market place.<sup>88</sup> Serving as a medium through which benefits from each of the marketing stages were returned to patrons, cooperatives helped to improve the economic well-being of farmers and the rural communities in which they lived.<sup>89</sup> Cooperatives allowed farmers to exercise ownership and control over their farm produce while exercising democratic values in the decision-making process.<sup>90</sup> The guiding principles, policies, and practices of cooperatives of today are reflective of this underlying philosophical rationale. Today, more than ever, the same philosophical rationale for cooperatives exist. The imbalance of market power between the individual farmer and the corporate giant is greater than ever. The continuing decline in the rural population is stark evidence that farmers and their communities are in desperate need of the benefits from the marketing of their produce—benefits which cooperatives can provide due to the cooperative structure. Having a voice in how the fruits of your labor are disbursed to the American consumer is just as valid a concept today as it was 150 years ago. Dr. J.G. Craig and S.K. Saxena of the Cooperative College of Canada completed a study called "A Critical Assessment of the Cooperative Principles."<sup>91</sup> They concluded that there is nothing wrong with the "values and essences of the philosophy."<sup>92</sup> Rather, the problems arise from how cooperatives are interpreting and practicing the principles.<sup>93</sup>

Changing cooperative philosophies and principles may be the quickest way to die, not survive. For, after all, it is the philosophies and the principles that distinguish a cooperative from a corporation.

National Farmers Union<sup>94</sup> and the Agricultural Cooperative Service<sup>95</sup>

84. *Let Ag Help Plan Future Policy, Carlin Advises NICE Young Farmers*, FARMER COOPS. 26, 28 (Sept. 1985).

85. Fred Sobering is Director of the Kansas State University Extension Service. *Id.*

86. FEDERAL MARKETING PROGRAMS, *supra* note 7, at 204.

87. *Id.*

88. *Id.*

89. *Id.* at 205.

90. *Id.*

91. Ingalsbe, *supra* note 42.

92. *Id.*

93. *Id.*

94. See 1985 Policy of Nat'l Farmers Union, adopted by delegates to the 83rd Annual Convention in Phoenix, Ariz., Mar. 3-6, 1985. ("Opportunities must be increased to obtain and share information so that members understand it in relation to the world in which they live.") ("Mutual benefits

suggest that education of members and non-members alike is a key factor in cooperative survival. People who do not understand cannot make knowledgeable choices about what is important and what is best for the American farmer. Education for the voting public, the lawmakers and the administrative bureaucracy is a priority. Further, education of youth is perhaps the most important task facing cooperatives. Because the young people of today are tomorrow's members, patrons and capital investors, youth need to receive special attention from cooperatives. Classroom education, local workshops or summer camps concentrating on cooperative education are viable methods for conveying the cooperative ideals and principles to young people.<sup>96</sup>

As noted earlier, Robert Bergland suggests that cooperatives can survive by undertaking tasks that major corporations will not. Where risks are great and profit margins are slim, corporate giants operating from a profit mentality are nowhere to be found.<sup>97</sup> What can be found is socially needed functions and responsibilities along with a need for basic necessities which many Americans take for granted. According to Bergland, "if cooperatives do not reach out to these kinds of disciplines and tasks, eventually the job will be done by the Government."<sup>98</sup> Having the Government do the job takes money out of farmers' pockets through increased tax dollars and returns none of the benefits in the form of patronage dividends.

Assuming that cooperative survival is directly tied to farmer survival, Secretary of Agriculture John Block claims that the answer to agriculture's difficulties, and thus cooperative survival, can be found in the Agriculture Adjustment Act (AAA) of 1985.<sup>99</sup> Even if there is disagreement over specific provisions of the AAA, cooperatives need to be alert to the fact that the upcoming decisions to be made by Congress are likely to chart the course for

and advantages accrue to the Farmers Union membership organization and to farm cooperatives when the farmer maintains a strong educational and promotional program on behalf of cooperatives. . . .").

95. See FEDERAL MARKETING PROGRAMS, *supra* note 7, at 204 (inferring that original purposes and philosophies remain the key to future coop. success).

96. See generally Ingalsbe, *supra* note 42 (for a discussion of the problems which may be eased by education).

97. Duffey, *supra* note 35, at 19. An example would be the Rural Electric Association's formulation for the purpose of bringing electricity to rural America in the 1930's. *Id.* at 18.

98. *Id.*

99. Statement by John R. Block, Secretary of Agriculture, before the Comm. on Agriculture, Nutrition and Forestry, Mar. 7 as reported in OFFICE OF INFORMATION, U.S. DEP'T OF AGRIC., SELECTED SPEECHES AND NEWS RELEASES 1-13 (Mar. 8, 1985). The domestic farm program provisions of the 1985 AAA are designed to provide farmers with a base for making long-term decisions. This is accomplished in part by proposing that the AAA's program become permanent law and by repealing the 40 to 50 year-old permanent programs that were authorized as part of the 1930's legislation. More importantly, the AAA would substantially reduce government interference in the price signals farmers receive and in the production decisions they make so that they are better able to adjust to actual market conditions. The AAA provides for a transition from high and rigid price supports to flexible and market-clearing price supports and gradually phases out acreage reduction programs, quotas, and allotments which keep low-cost American products from competing with those of less efficient foreign producers.

Other major provisions of the AAA address exports and trade, resource conservation and agricultural credit. These provisions are consistent with the domestic farm program provisions in that they minimize government intervention, direct or indirect, by establishing programs that emphasize market expansion and minimize production incentives not consistent with market realities.

agricultural policy well into the next century. A well-informed cooperative can plan now for the changes that will impact on its future. A cooperative must be aware of the 1985 AAA proposals and follow the debates through Congress. Cooperatives should make recommendations to Congressmen as to what cooperatives and cooperative members know are desirable legislative goals. It is important to remember that many Congressmen do not have rural backgrounds or the expertise necessary to make informed decisions about what is best for agriculture. Cooperatives are in an ideal situation to serve as an active voice for their individual members, if cooperatives speak out before the legislation is passed.

### CONCLUSION

The American system of farming is one of the most capable systems of food and fiber production. The farmer-owned cooperative is an effective organization through which farmers can reduce costs of production, maintain a reliable source of services and effectively market and process farm products. Together, the American farmer and the farm cooperative must fight for survival because survival is neither automatic nor guaranteed. Federal policies and programs are essential to protect individual farmers against the hazards of the marketplace, where almost everyone else is protected. Workers are guaranteed a minimum wage and the right to collective bargaining; many consumers' earnings or income are linked to the Consumer Price Index; and government regulated industries have a guaranteed return. Due to the fact that farmers are responsible for the production of a dependable supply of food and fiber, a fair return would be a parity of income with the rest of society. Cooperatives must aid in the achievement of that fair return or the customers will no longer be the company but rather the victims.

WENDY MOSER