

1981 WL 157857 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 8, 1981

\*1 The Honorable Ramon Schwartz, Jr.  
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Law Range  
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Dear Mr. Speaker:

You have requested an opinion of this Office as to several questions relative to existing State Law in connection with telephone cooperatives. The questions are:

1. Under what statutory authority is a telephone cooperative chartered?
2. Can a telephone cooperative own or control a subsidiary organized as another cooperative? If so, who are considered to be the voting members of each?
3. Can a telephone cooperative own or control a subsidiary organized as a corporation chartered under the Business Corporation Act?
4. Can a telephone cooperative be a subsidiary of another cooperative association which exercises control or ownership over a business corporation?
5. If it is permissible for a telephone cooperative to own, or control, a subsidiary business corporation, what effect would the corporate profits or losses have upon the rate structure of a telephone cooperative?
6. Can a business, partially retail and partially service oriented, be a cooperative association?

The opinion of this Office as to the above stated questions are as follows:

1. Sections 33-45-10, et. seq., Code of Laws, South Carolina, 1976, as amended, addresses 'Cooperative Associations Generally.' Section 33-45-30 list the type of businesses that may form such cooperative associations. That section states that: Five or more persons, residents of this State, may associate themselves as a cooperative association, society, company, union or exchange for the purpose of conducting within this State any agricultural, dairy, mercantile, mining, mechanical or manufacturing business on the cooperative plan.

It is our opinion that when Sections 33-45-10, et. seq., were originally enacted, Act 152 of 1915, that a telephone cooperative would have come within the parameters of the 'mechanical business' provision of the above-cited section. Cf. [State ex rel. Winterfield v. Harden County Rural Electric Co-op.](#), 285 N.W. 219, 225, 226 Iowa 896.

2, 4 and 5 Sections 33-45-90 sets forth the restrictions placed on a cooperative association formed pursuant to Sections 33-45-10, et. seq., as to the maximum amount of shares a stockholder could own in the capital stock of a cooperative. Section 33-45-90 states that:

No stockholder shall own shares of a greater par value than one fifth of the capital stock of the association or be entitled to more than one vote on any subject arising in the management of the association.

Therefore, it is our opinion that the above-cited section would restrict any cooperative association from having more than one fifth of its shares held by a particular stockholder, e.g., another cooperative association.

3. There is no authority for a telephone cooperative formed under Sections 33-45-10 et. seq., to own or control a subsidiary organized as a corporation chartered under the Business Corporation Act.

\*2 Section 33-45-150 sets forth the powers of a cooperative association formed pursuant to Sections 33-45-10, et. seq. Those powers do not provide for such a cooperative association to own or control a subsidiary organized as a corporation chartered under the Business Corporations Act. The absence of such authority by the Legislature is significant in that Sections 33-47-10, et. seq., in reference to Marketing Cooperative Associations, specifically Section 33-47-40, and Sections 33-49-10, et. seq., in reference Rural Electric Cooperatives, specifically Section 33-49-250, provide for such authority.

Therefore, by Sections 33-45-10, et. seq., not delineating the authority for a cooperative to own or control a subsidiary organized as a corporation chartered under the Business Corporations Act, it is our opinion that the legislature intended to exclude such authority. See [Southern Railway Co. v. S. C. Hwy. Dept.](#), 237 S.C. 75, 115 S.E.2d 685 (1960).

6. There are no prohibitions in the Sections authorizing the formation of ‘Cooperative Association Generally,’ Section 33-45-10, et. seq., that would prohibit such an association from conducting business of both a retail and service oriented nature. Also, see 18 AmJur 2d, [Cooperative Associations](#), Sections 1-2 (1965).

If this Office can be of further assistance, please do not hesitate to contact us.

Very truly yours,

C. Havird Jones, Jr.  
Assistant Attorney General

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