

COOPERATION IN NEBRASKA

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61st Annual Meeting

The 61st Annual Meeting of the Nebraska Cooperative Council was held on November 17 at the Holiday Inn & Convention Center in Kearney. This year, 190 cooperative leaders from across the state attended the meeting.

The meeting began with the business session for the organization. Board Chair Dale Piper of Elmwood presented a report on the Board's activities of the past year. Board Secretary Bruce Favinger of Hastings then presented the Council's financial report, and Bob Andersen followed with the President's report.

The keynote address for this year's meeting was given by Walt Coleman who operates a family-owned dairy processing plant in Arkansas that is part of the cooperative family. In addition to the dairy, Mr. Coleman is also an NFL football official.

Coleman provided a very insightful and entertaining presentation for the membership. Throughout his presentation, Coleman shared his experiences of competing at the very highest level possible. He talked about how being surrounded by high-level performers raises your level of performance. Throughout his presentation, he mixed in humorous stories from his NFL experiences to make the point that leadership comes at some cost. Coleman indicated that when you take on a leadership role, eventually you will have those attack you simply because you are the leader. He stressed that regardless of the discomfort, it is imperative that leaders step forward to carry on the mission of any organization.

Following Coleman's presentation, the Voting Delegate Caucus was held. Jim Chism of Imperial and Jerrell Dolesh of Battle Creek were both re-elected to the Council's Board for three-year terms.

Following the morning break, Senator Philip Erdman of Bayard provided an overview of the 2007 legislative session. He touched on a wide variety of issues that will impact the 2007 session and, ultimately, the citizens of Nebraska.



NFL football official Walt Coleman provided the keynote address at the 2006 Annual Meeting.

The final presentation of the morning was by Craig Head, Interim Executive Director of the Alliance for the Future of Agriculture in Nebraska (A-FAN). Head provided the background on the formation of A-FAN and the mission of the group. He stressed that A-FAN's goal is to help promote agriculture (particularly livestock production) in Nebraska.

The noon luncheon provided the opportunity to recognize a number of cooperative leaders. First recognized was retiring Board member Mike Maranell from AGP in Omaha. Mike served on the Council's Board for the past two years. Jim Ledbetter, Max Kimmerling, and Frank Stander were then inducted into the Cooperative Hall of Fame (see article on page 3).

The Legal, Tax & Accounting Workshop was featured during the afternoon session. Attorneys Rocky Weber, Dave Jarecke, Bill Kutilek, and Tom Jeffers with the law firm of Crosby Guenzel LLP presented this year's workshop. The group addressed a variety of issues including Capper-Volstead and competition, directors' duties of confidentiality, directors' conflicts of interest issues, setting stockholder qualifications, sales tax issues, credit/secured creditor issues, Nebraska Department of Environmental Quality enforcement actions, construction contract basics, and miscellaneous cooperative-related issues.

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President's Message



Last month, the Council's Annual Meeting was conducted in Kearney. Due to the mild weather and anhydrous ammonia being put down plus the late harvest in some areas of the state, our attendance was less than we had hoped; yet, we had about 190 attend the noon luncheon.

During the noon luncheon, Max Kimmerling, Jim Ledbetter, and Frank Stander were inducted into the Nebraska Cooperative Council Hall of Fame. I was fortunate to have had the opportunity to work with all three; each was most deserving of this special recognition.

As you review this publication, you'll denote that the Council's Educational Advisory Committee and Fund For Excellence Committee have been replaced with the Excellence in Cooperative Education Committee. This was done to streamline the processes and to create more efficiencies within the Council's operations. The end result is that this will allow us to focus more holistically upon the educational programs in the future. If you have not registered for any of the Council's educational programs for directors and managers, I encourage you to do so. Cooperative education is a fundamental and important part of any cooperative's continued success in an ever-changing business environment.

On January 3, the Nebraska Legislature will convene for its 90-day session. This year, there will be 22 new senators within the 49-member legislative body. Unquestionably, this coming session will be a challenge and will require more time upon the various trade associations in issue education. There are a lot of quality and capable individuals who have been elected as state senators.

I encourage you to carefully review the article on page 6 concerning the Investor Patron Association (IPA) Act. This legislative pursuit should be considered as major legislation. The Council's New Generation Cooperatives Task Force devoted a considerable amount of time and energy to studying this matter; it was a learning curve for all of us involved in the study. The Task Force started the process with the caveat that any legislation must be beneficial to farmers/ranchers and cooperatives, and secondly, any changes must not adversely affect local ag cooperatives. Our review process included having proponents and opponents from Wisconsin, Iowa, and Washington, DC meet with the Task Force, and the inclusion of other ag stakeholders in the process. In August, we conducted membership informational meetings across the state to help the membership understand this issue as well as the opportunities and challenges. In the final analysis, the Task Force submitted a recommendation to the Council's Board of Directors that the Council should pursue such legislation because this legislation would enhance value-added agriculture in Nebraska; it would enhance value-added opportunities as a whole; and that since this concept includes a "cooperative component," the Council should take a lead position in same. I am pleased to announce that Senator Erdman of Bayard has agreed to introduce the legislation on our behalf. More information will be forthcoming.

In closing, I want to extend my personal best wishes for a happy holiday season and a prosperous new year to each of the respective cooperative management teams and their families.

In the cooperative spirit, I remain....

Robert C. Andersen, President



Thanks for Your Service...

A special thanks to our outgoing Board member **Mike Maranell** from AGP in Omaha (top left). Thank you, Mike, for your time and dedication to help the Council fulfill its mission.

We also welcome to the Board new Participating Member representative **Mike Hechtner** from CoBank in Omaha (bottom left) who will serve a two-year term. In addition, re-elected to the Board for three-year terms were **Jim Chism**, Manager of Frenchman Valley Farmers Co-op, Imperial (top right); and **Jerrell Dolesh**, Board President of Battle Creek Farmers Co-op N/S (bottom right).



2006 Hall of Fame Inductees

Membership in the Nebraska Cooperative Council Cooperative Hall of Fame grew by three with the induction of **Jim Ledbetter** of Chappell, **Max Kimmerling** of Beatrice, and **Frank Stander** of Greenwood. The induction ceremonies were held at the noon luncheon of the Council's Annual Meeting on November 17, 2006 in Kearney.

With these three inductees, the Hall of Fame is now home to 45 members. These 45 members exemplify the leadership that has allowed Nebraska cooperatives to flourish over the years.

Each of this year's inductees was presented with a framed certificate commemorating their induction into the Hall of Fame by Council Board Chairperson Dale Piper. In addition, a plaque outlining each of the inductee's accomplishments will be permanently displayed at the Council's office in Lincoln.

Each of this year's inductees provided substantial leadership for his respective cooperative. A summary of their accomplishments are:

Max Kimmerling...Max served as an elected leader for Mid-America Dairymen and Dairy Farmers of America for 20+ years. He was a director of Mid-Am at the time of the consolidation with three other regionals to form DFA which today is the largest dairy cooperative in the United States.

Jim Ledbetter...Jim was employed by Farmers Elevator Company in Chappell for 42 years, 29 of these were spent as General Manager of the company. During his years as manager, Jim implemented many innovative programs that have been replicated by cooperatives all across the state.

Frank Stander...Frank served on the board of Greenwood Farmers Co-op for 27 years. Eight of these years were spent as vice chair and 17 as board chair. Under Frank's leadership, the cooperative remained financially strong and grew from one to nine locations.

Congratulations to each of these three outstanding cooperative leaders. Their work over the years has left a positive impact on the cooperative system, of which we all can enjoy.



2006 Hall of Fame inductees pictured with Council President Bob Andersen and Board Chair Dale Piper. From left, Andersen, Frank Stander of Greenwood, Jim Ledbetter of Chappell, Max Kimmerling of Beatrice, and Piper.



NCC Hall of Fame display in the Council office.



Our thanks to the following retiring Committee members for serving on Council committees in 2005/06. The dedicated efforts of these individuals provides the leadership necessary for the Council to accomplish its goal of representing grassroots members on a statewide basis.

Tim Boender, Agriliance (LAC)
Eric Johnson, O'Neill (LAC)
Max Larsen, Beatrice SE (LAC)
Rich Richey, Columbus (LAC)
Dale Rohrer, Funk (LAC & EAC)
Deino Sather, CoBank (LAC)
Don Anthony, Gothenburg (EAC)

Tom Connelly, Spalding (EAC)
Bruce Favinger, Hastings (EAC & FFE)
Tom Houser, CoBank (EAC)
Don Lien, Holdrege (EAC)
Harold Printz, Kimball (EAC)
Bill Schuster, Aurora (EAC)
Jerrell Dolesh, Battle Creek (FFE)

Darwin Franzen, Dodge (FFE)
Wade Mulari, Coop Mutual Insurance (FFE)
Randy Robeson, Brainard (FFE)
George Hohwieler, Aurora (PAC)
Brian Williams, Ainsworth (PAC)

Upcoming Education Programs

Managers – To register yourself or your directors for any of these programs, please use the registration forms that were mailed to you in late October. Should you need another copy, they are available on the home page of the Council's website at www.nebr.coop or by calling Deb at the Council office. Pre-registration deadlines are indicated on each registration form.

The Council will once again host a full range of educational programs for local management teams this winter.

The **Director Certification Program** (DCP) will be conducted in Kearney on January 3 and 4. DCP covers all aspects of directors' responsibilities to help them deal with the challenges they face as decision makers. DCP is designed to accelerate the process by which directors become active, effective board members.



Objectives of the program are:

- To provide a clear understanding of the board's roles and responsibilities and how these differ from those of the manager
- To provide working knowledge of successful cooperative planning and monitoring of results
- To help participants understand cooperative financial statements and their use in making decisions
- To provide hands-on experience in cooperative problem solving
- To enable directors to gain insight into the operations of other co-ops through interaction with other participants

Facilitating the four DCP phases will be Dennis Conley, University of Nebraska-Lincoln; Roger Ginder, Iowa State University in Ames; Deino Sather, CoBank in Omaha; Rocky Weber, Crosby Guenzel LLP law firm in Lincoln; and Byron Ulery of Beloit, KS.

Graduate Director Seminar 3 (GDS3) will be offered for our members on January 5 in Kearney. GDS3 focuses on *Establishing the Value of Your Cooperative* and addresses the



various methods of placing values on assets for the benefit of buyers, sellers, and all entities involved. Discussion focuses on problematic conditions which may exist for cooperatives in a period of transition as they attempt to place value on their own or neighboring

operations.

A case study format is used to provide realistic working examples of establishing the value of a business and allow maximum participant involvement. Discussion provides a clear illustration of the various differences involved in asset valuation methods.

The objectives for GDS3 are:

- Gain insight into the various methods of establishing the value of assets

- Enhance decision-making skills during consideration of consolidation/disposition/acquisition of assets
- Provide hands-on experience in problem solving through a case study format

The Graduate Director Seminars are designed for all directors who have completed the four phases of DCP. We'd even encourage directors who took this seminar four years ago to consider attending again. While the concepts of the seminar remain the same, we all know much has changed in the cooperative world in the past four years so an update may serve all directors well. Facilitating the day-long program will be Roger Ginder and Dennis Conley.

The final educational offering that we will host is the **Cooperatives For Tomorrow** (CFT) program. CFT will be held at Embassy Suites in Lincoln on February 7, 2007.

CFT is designed for cooperatives that are seeking additional input to help determine the proper strategic position for the cooperative. Whether through rapid growth or evolving business practices, cooperatives are being forced to change at a more rapid pace to be able to meet the needs of their members.

CFT features a variety of speakers and presenters that normally would not be available to local directors in Nebraska. We utilize nationally known speakers from both the academic and cooperative systems to provide local directors with the opportunity to obtain a different viewpoint on issues facing their cooperative.

The program is intended to be thought provoking and to challenge local directors to think in a broad sense when determining the correct strategic position for the cooperative.

Because of the nature of this program, it would serve as an excellent prelude to a board retreat or planning session.

Speakers for the day-long program will include:

Dr. Lowell Catlett...a nationally known Ag Economist who serves as Interim Dean of Agriculture at New Mexico State University. His address will be *Tomorrow's Agriculture: Six Trends You Can't Afford To Miss*. In addition to his college duties, he also serves as a consultant to many Fortune 500 companies as well as to the U.S. Departments of Agriculture, the Interior, Defense, and Labor. Dr. Catlett is very well known nationally for presentations that help everyone peer into the future. With his unique blend of humor and down-home straight talk, his presentations are extremely thought provoking



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Education Programs (cont. from page 4)

and highly entertaining. A sample of Dr. Catlett's humor...

"We have correctly forecast 15 of the last 5 recessions."

Dr. Ernie Goss...is the Jack MacAllister Chair in Regional Economics at Creighton University in Omaha. Dr. Goss has published over 80 research studies focusing on economic forecasting and analysis of business and economic data. He is currently conducting a monthly "Mainstreet Economy" survey that groups the strengths of the rural economy in Colorado, Iowa, Kansas, Missouri, Nebraska, South Dakota, and Wyoming.

Robert Engel...assumed the role of CEO of CoBank in July of 2006. He will present his view of the future of cooperative lending and how CoBank will evolve to meet the needs of a fast-changing agribusiness structure.

Dr. Roger Ginder...is an Ag Economist at Iowa State University. He has conducted research on Iowa cooperatives over the past several years to determine various efficiency factors for them. The past two years, he has incorporated Nebraska cooperatives into the study. From his presentation, not only will you see how efficient Nebraska cooperatives are but you will also see how Nebraska cooperatives compare to Iowa cooperatives.



Board Establishes Excellence in Cooperative Education Committee (EAC-FFE Committees Merged for Efficiency)

The Council's Board of Directors has taken action to create the Excellence in Cooperative Education Committee (ECEC). With this action, the former Fund For Excellence (FFE) and Educational Advisory Committees (EAC) will be discontinued, and the ECEC will assume the combined duties of both former committees.

The ECEC will provide oversight on the FFE monies, maintain an "interest only" spending philosophy, and advise on educational programs and projects that will occur as a result of the creation of the NCC Distinguished Professorship. Having one committee will facilitate sound communication for our educational programs. By having the funding and the educational advisory group all on one committee, the education mission and funding of same will be more streamlined and coordinated.

Originally when the FFE Committee was created, legal counsel also recommended a separate committee to oversee the Fund. The Council raised \$505,932 for this fund and has maintained all the funds in a restricted account which has only been used for research and educational projects that benefit the ag cooperative system. Under our original agreement with the University, FFE monies were used to fund projects and programs that would impact the cooperative community. It also provided that an IANR professor with extension responsibilities would be utilized to direct Council education programs. It was also the intent that only interest earnings would be utilized to fund projects.

Consequently, the FFE Committee provided oversight for investments as well as input on the various projects that needed to be funded. Both of these were important functions that the Council needed input on.

The EAC, on the other hand, has maintained a mission in an advisory role for the design of educational programs that meet directors' needs. Their focus has been primarily on content and how to provide holistic director education.

With the creation of the NCC Distinguished Professorship in May of 2006, our annual contribution to the University will be used primarily as salary support for a faculty position at the IANR in extension education that focuses on ag cooperatives. Therefore, much of the FFE Committee's work dealing with funding projects has changed.

As the Board has taken this action, it is important to note that this is not being done with the purpose of eliminating a committee but rather to allow the educational mission of the Council to be carried out as efficiently as possible. The restructuring will enable a holistic approach to educational planning and greater efficiencies.

***Leadership and learning are
indispensable to each other.***

-- John F. Kennedy

Investor Patron Association Act (New Generation Cooperatives)

Over the last five years, there have been increasing legislative activities on the state level resulting in the adoption of laws commonly known as "New Generation Cooperative Laws." The first state to enact such a law was Wyoming in 2001 with Minnesota following in 2003, Tennessee and Iowa in 2005, and most recently Wisconsin this year.

In November 2005, in conjunction with the Nebraska Cooperative Council's Annual Meeting, the Board of Directors announced the establishment of a New Generation Cooperatives Task Force (NGCTF) whose mission was (1) to fully study and evaluate the advantages and disadvantages of Nebraska pursuing new cooperative legislation and (2) to submit a final recommendation to the Board.

Nebraska has adopted what we feel is a more descriptive title for this effort—the Investor Patron Association (IPA) Act. From this point forward, we will refer to this issue as IPA to reduce confusion.

The Task Force met throughout the spring and summer to gather information and hear from both proponents and opponents from other states sharing their perspectives to the merits of such. The Task Force addressed such federal issues as the impact to the Capper-Volstead Act, taxation on cooperatives, and securities. The task force addressed many concepts and ideas in studying this issue. Throughout the process, the Task Force was adamant that any such legislation, if pursued, had to meet the following criteria:

1. Any statute change must be beneficial to Nebraska's farmers/ranchers and their cooperatives
2. Any changes must not adversely impact current state statutes governing supply/marketing cooperatives

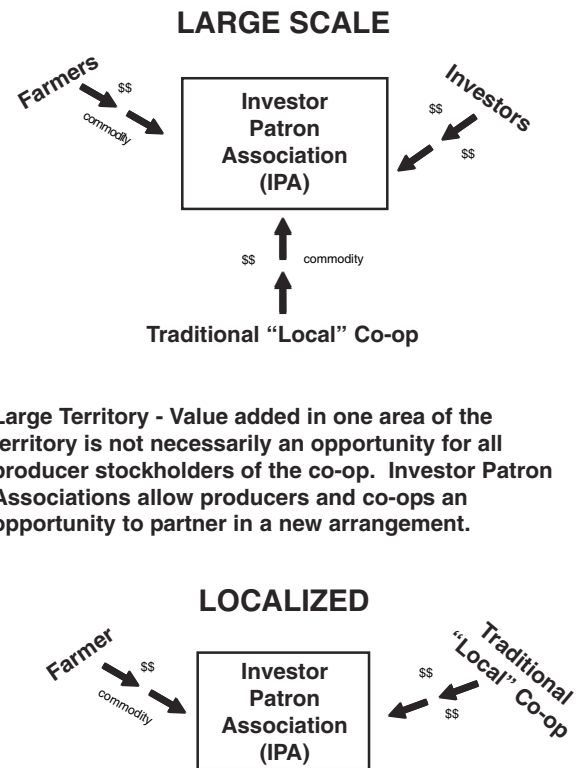
Concurrently underway at the same time as our Task Force Study was the determination by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to develop a "model act" for states to consider for New Generation Cooperative (NGC) laws. Dr Harvey Perlman, UNL Chancellor, serves on the NCCUSL Committee.

As the Task Force concluded its study, they asked the following three policy questions:

1. Is value-added ag important to Nebraska?
2. Will NGC legislation enhance value-added opportunities?
3. Should Nebraska co-ops be the "lead" in developing co-op business models?

The Task Force unanimously agreed in the affirmative to the afore listed policy questions and unanimously adopted a resolution recommending that the NCC Board of Directors proceed with the preparation and introduction of legislation in Nebraska to adopt an IPA Act generally consistent with the uniform proposal currently being considered by the National Conference of Commissioners on Uniform State Laws.

SCHEMATIC ILLUSTRATION



To help bring this issue into focus, the illustration above was developed to visually show how a new model could function. This illustration helps bring the concept into greater clarity.

The Task Force and Council's Board of Directors have determined to seek the introduction of legislation this coming session. However, such legislation will be referred to as the Investor Patron Association (IPA) Act to more accurately describe our legislative efforts.

In order to begin the educational process for introduction of new legislation, the Council hosted informational meetings for the membership across the state in late August and September. The purpose of the meetings was to explain the process we used to determine if new legislation was necessary and to provide them with a conceptual vision of what the new legislation would allow producers to achieve.

As with all issues of this type, the Council strives to work with major stakeholders on any legislative or regulatory issue affecting cooperatives. By working together with other groups, we can present a unified effort which will ultimately benefit the view of cooperatives.

The meeting was held in Kearney on November 16. All major farm organizations were invited to attend the meeting;

unfortunately, a number of groups had previously scheduled meetings with their own memberships so they were not able to attend. Those organizations in attendance were:

Center for Rural Affairs	NE Poultry Industries
Dairy Council of Nebraska	NE Public Power District
NE Cattlemen	NE Soybean Assn
NE Cooperative Development Center	NE State Grange
NE Corn Growers Assn	NE Wheat Growers Assn
NE Farmers Union	USDA Rural Development
NE Grain & Feed Assn	WIFE
NE Pork Producers	

Unable to attend were the NE Beet Growers, NE Dry Bean Growers Assn, NE Farm Bureau, NE Grain Sorghum Producers Association, NE Independent Community Bankers, NE Petroleum Marketers & Convenience Store Assn, and NE Propane Gas Assn.

During the meeting we provided stakeholders with the background on this issue and the process that we used to study the issue; defined what an IPA is; described how an IPA model may be used in Nebraska; and gathered input from the various stakeholders relative to the need for such legislation. It should be noted that this legislation would not circumvent Initiative 300.

The discussion throughout this meeting proved to be beneficial and allowed all the stakeholders to gain a better understanding of what we are attempting to accomplish. By informing other stakeholders well ahead of time, we hope to resolve any issues that are raised before legislation is introduced.

In addition to this meeting, Council staff has held meetings with the Governor's Policy Research Office, the Department of Economic Development, the Nebraska Bankers Association, and the Nebraska Chamber of Commerce.

As this publication is being developed, we're in the process of visiting with others about the legislation and modifying the language of same.



Council President Bob Andersen addressing the farm groups to discuss potential new cooperative legislation during a meeting on Nov. 16.

Commonly Asked Questions Relating to Investor Patron Associations (New Generation Cooperatives)

In other states, this legislation has been referred to as "new generation cooperatives law." In Nebraska, the legislation will be titled the Investor Patron Association (IPA) Act. We believe this more accurately describes the business model that would develop as a result of the proposed legislation.

What prompted the development of the new generation cooperative business model (IPA in Nebraska)?

The cooperative business model has been in existence since the late 1800s. In the early part of the last century the enactment of several laws by Congress developed the parameters of the modern cooperative business model. Primary among these was the Capper-Volstead Act adopted by Congress in 1922.

Section 1 of the Capper-Volstead Act allows cooperatives and their members to act collectively in ways that would otherwise be prosecuted as a restraint of trade under the Sherman Anti-Trust Act. Members of cooperatives may use the cooperative to jointly set prices and market their products. The Capper-Volstead Act requires that (1) each member, who must be an agricultural producer, be limited to one vote regardless of the amount of stock he or she may own in the cooperative; (2) that the association not pay dividends in excess of 8% annually to stockholders; and (3) that the association not deal in the products of non-members to an amount greater in value than the products dealt with for members. (The purpose of the non-member business restriction is to prevent the cooperative from becoming a "middle man.")

This business model allowed the agricultural producer to join with other agricultural producers to jointly participate as a group in the general marketplace. The intent was to "level the playing field" with large privately owned agricultural businesses.

Unquestionably, the model served farmers' interests well. Today, farmer-owned cooperatives in many states form the backbone of the commercial structure in which agricultural commodities and agricultural goods and services are marketed.

In the 1990s "value-added" agriculture became an increasingly popular topic among agricultural producers. Agricultural producers increasingly desired to be able to keep more of the value of the commodities they produced as those commodities moved through the stream of commerce. Farmers began

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Questions Relating to IPA Act (cont. from page 7)

investing money and committing their agricultural production to enterprises such as bean crushing plants, ethanol plants, flour processing facilities, etc.

In order to purchase or construct the physical assets necessary to participate in value-added agriculture, farmers realized that the largest hurdle they had to overcome was raising sufficient capital to adequately fund the enterprise. Initial value-added ventures typically followed the traditional cooperative model as prescribed by Capper-Volstead. Consequently, the organizers were limited by the requirement that the cooperative be farmer owned and controlled and that any return on investment (in excess of patronage allocations) be limited to 8% annually. Given the start-up costs of many of these ventures, the limitations on ownership and return on investment that exists with the traditional cooperative model became an impediment to acquiring sufficient capital investment for a successful venture.

Consequently, in an effort to create a business model that remained farmer owned but allowed non-farmer investment, the New Generation Cooperative (NGC) model was developed.

What is a new generation cooperative (IPA in Nebraska)?

Five states currently have NGC laws, and those laws are similar in many respects. Likewise, the NCCUSL Uniform Cooperative Association Act is similar in most respects to the existing state laws. The NGC business model blends the traditional structure of a farmer-owned cooperative that provides for farmer control and patronage allocation participation with traditional limited liability company features that allow for a broad range of voting control and distribution of income to non-farmer investors.

For instance, the Minnesota statute allows outside investors to have up to 85% voting control and receive up to 85% of the distributions. There is no limitation on the percentage that an investor may recover for return on investment. Iowa, on the other hand, requires that a majority of the Board of Directors be elected by the farmer members unless the By-laws require otherwise. The Iowa model also allows patron (farmer) members to have additional votes based upon patronage or amount of investment by the patron. This is a radical departure from the traditional cooperative model that requires that distribution of profit be solely on a patronage basis.

Under these statutes, NGCs may elect Subchapter "T" taxation, which is the traditional cooperative taxation, or choose to be taxed as a limited liability company which is partnership taxation.

In most instances farmers can be both patron participants and investor participants. Likewise farmer-owned cooperatives can be both patron participants and investor participants. For

instance a local cooperative could invest capital, seek a return on the investment, and have the investment repaid early and continue to participate on a patronage basis for commodities delivered to or purchased from the NGC.

Consequently, the NGC model provides a means for a value-added venture to seek and obtain investment capital from any source while at the same time having patronage participation by farmer owners.

If the Nebraska Legislature would enact IPA statutes, how would this be of value to existing local stock and non-stock cooperatives? Conversely, how would this be disadvantageous for locals?

As associations of farmer members, local stock and non-stock cooperative associations may join together with outside investors in the formation of an IPA. The local stock and non-stock cooperatives could invest in the IPA and have return on the investment in the form of patronage allocations. The "farmer control" provisions of most IPA laws would also protect the voting power of the local stock and non-stock cooperatives as members of the IPA.

The existence of IPAs in and of themselves would not have a negative effect on the existing cooperatives. The process of enacting IPA legislation does pose some risk of the Legislature rewriting the current statutory scheme that governs the stock and non-stock local cooperatives.

What do IPA statutes provide Nebraska producers and local cooperatives that a Limited Liability Corporation (LLC) doesn't currently provide?

The IPA statutes mandate minimum levels of profit distributions and board participation for producer members and provide that allocations to those members may be on a patronage basis, rather than on a per investment unit basis. LLC statutes do not mandate these protections for producers. That is not to say, however, that members of an LLC could not negotiate similar provisions into an Operating Agreement.

If Nebraska enacts a state IPA statute, what would happen, from a legal perspective, if ultimately it is determined on a federal level that these entities don't come under the anti-trust exemptions under the Capper-Volstead Act?

A conclusion that an IPA does not meet the "association of farmers" test for limited anti-trust exemption would not affect the legality of an IPA formed under Nebraska statutes. The IPA could operate as a business entity consistent with the provisions of the law. It would, however, have to conduct its business operations in such a way as to not violate the terms of the

Sherman Anti-Trust Act and Clayton Act which prohibit monopolization and market concentration.

An IPA appears to offer the same business model as a business using the LLC structure. Would the pursuit of an IPA structure increase the likelihood of additional laws or regulations that would in some way be damaging to the existing cooperatives in the state of Nebraska?

It is true than an Operating Agreement of an LLC could be negotiated and drafted to provide super majority protection for minority economic interest holders and provide for allocations of profit based upon criteria not specifically related to a per unit allocation. However, LLCs are taxed as partnerships. LLC members receive a K-1 tax statement at the end of the fiscal year on which the member is allocated not only income, but also the expenses, appreciation or depreciation, and other book/tax elements of the financial results for the fiscal year. Thus an LLC member may have to recognize capital gain without having received enough cash to cover the tax obligation. Although some LLC Operating Agreements do provide for minimum levels of cash distribution to cover expected tax expenses for the members.

The IPA does provide a model whereby the allocations to the producer patrons may be made as patronage allocations. Thus qualified written notices of allocation may be used, requiring at least 20% of the allocation to be paid in cash. Also, all income is treated as ordinary income through patronage allocation. All aspects of the year's financial results are not allocated to the patron, only the "net" margins.

The legislative process of adopting an IPA statute in Nebraska could lead to a review of the existing cooperative laws in Nebraska. With a review, there is always the possibility that provisions could be added, amended, or repealed that would have a negative result on the existing local cooperatives. The industry would have to be very vigilant in this respect during the legislative process. One way for the industry to have more control is to have the industry be the advocate of the IPA law to position the industry to have some measure of control as to the collateral risks associated with the legislative process.

It would appear that producer/patrons of traditional co-ops would not seek to form an entity that invites and cedes some degree of control to investment membership without there being some advantage to producers. How could an IPA provide greater return, benefit, or value to producers than existing methods of participating in value-added ventures or is the advantage primarily in capital accumulation?

In all likelihood, traditional cooperatives would not convert to the IPA model as the IRS would likely view the conversion as

a taxable liquidation of the existing cooperative. The tax consequences to the cooperative and stockholders would be significant. However, for purposes of start-up entities and value-added projects, the ability to attract non-producer investment capital is a material benefit to the producers that the traditional model of a cooperative cannot match. This is the primary reason for the development of the IPA.

The IPA model does, however, provide an avenue for a local cooperative to be a patron participant and investor participant. This flexibility would allow the cooperative to partner with individual farmers in a part of its trade territory to construct a value-added venture that benefits those local farmers and all of the members of the local cooperative. Likewise, the local cooperative can provide a means for its members to be investors in a value-added enterprise through the investment of the local cooperative in the IPA.

Would there be any advantage in adopting an IPA model for new cooperatives if the primary purpose of the cooperative is confined to traditional supply and marketing functions only? In other words, would there still be a demand for the traditional cooperative model?

Yes. The traditional cooperative model would still be the model of choice when the equity-holders are limited to farmers. If producers alone can raise the money necessary to commence business, or if the working capital needs of the cooperative are modest, the traditional model would still be appropriate. The advantage of an IPA model would largely be in the value-added arena where large amounts of capital are necessary to commence business operations.

Why does Nebraska need this legislation?

Legislation such as this will allow producers to have one more "tool" to work with in developing new opportunities. Value-added businesses generally are very capital intensive. By allowing other investors—such as the local banker, doctor, and others—producers can enter the value-added arena without having to raise all the equity from themselves.



NEBRASKA COOPERATIVE COUNCIL MISSION STATEMENT

"To defend, protect and enhance the agricultural cooperative movement through pro-active programs in education, legislation, government affairs, communication, and regulatory issues."

THE COOPERATIVE PRINCIPLES:

- Voluntary and Open Membership
- Democratic Member Control
- Member Economic Participation
- Autonomy and Independence
- Education, Training and Information
- Cooperation among Cooperatives
- Concern for Community



Visit our website at
www.nebr.coop

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BOARD DIRECTORS

Jerrell Dolesh, Battle Creek District II
Tom Hansen, Edison District I
Eric Johnson, O'Neill District II
Dale Rohrer, Funk District I
Ron Velder, Dorchester District II
Mike Hechtner, Omaha Participating Member

STAFF

Robert C. Andersen, President boba@nebr.coop
Ed Woepfel, Educ./Program Dir. edw@nebr.coop
Glenda Gaston, Office Mgr/AA ... glendag@nebr.coop
Deb Mazour, Program Coord/AA debm@nebr.coop

Leaders Named to Cooperative Hall of Fame

David Chatfield, Jack Gherty, Charles Gill and Jean Jantzen have been selected for induction into the Cooperative Hall of Fame, the cooperative community's highest honor, which recognizes those who made "heroic" contributions to cooperative enterprises. The four cooperative business leaders will be recognized at the annual Hall of Fame Dinner and Induction Ceremony at Washington's Press Club on May 2, 2007.



Gherty retired last year after 35 years with Land O'Lakes (LOL), 16 of them as president and CEO. During his tenure, Minnesota-based LOL was transformed from a regional into a national farmer-owned business, giving producers a powerful presence in the marketplace and a voice in the policy arena. Under Gherty, the co-op's membership expanded from 15 to 39 states and annual sales tripled. In 1987, Gherty spearheaded a precedent-setting joint venture between LOL and Cenex that established a new model for cooperative business activity.

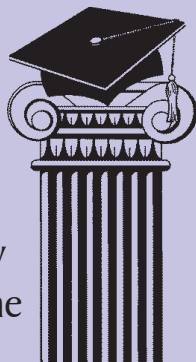
Jantzen is a life-long champion of co-op communications and education. She began her career in 1963 as a secretary for a predecessor co-op of CHS Inc., now a \$12 billion Minnesota-based food and energy cooperative. A role model for women in cooperatives, she rose through the ranks and was a key player in the 1998 merger between Cenex and Harvest States that created today's CHS. She retired in 1999 as CHS's vice president for public relations. Jantzen was a long-time trustee of the Cooperative Foundation and was instrumental in the growth of the CHS Foundation, which today provides more than \$1.3 million a year for cooperative education and other purposes. (Courtesy of USDA Rural Cooperatives)



A view of the audience at the Hall of Fame induction ceremony held in conjunction with the Annual Meeting.

Scholarship Program

Posters and brochures/application forms for scholarships for the 2007/08 academic year were forwarded to cooperative managers in early December. Additional application forms can be found on the home page of the Council's website at www.nebr.coop or by contacting Deb or Glenda at the Council office at 402/475-6555. Completed applications must be returned to the appropriate colleges by **April 5, 2007**.



NCFC Defends Ability of Farmer Cooperatives to Utilize Tax Benefit

Members of NCFC's Legal, Tax and Accounting (LTA) Committee are working with NCFC staff to ensure that cooperatives can fully utilize a new tax benefit for domestic manufacturers as intended by Congress. Contrary to statutory language and congressional intent, the Department of Treasury has issued final regulations preventing farmer cooperatives from using a key component of this tax deduction.

The American Jobs Creation Act, passed in 2004, (which replaced the exclusion for extraterritorial income, or ETI), enacted a phased-in, 9% deduction that applies to proceeds from agricultural or horticultural products that are manufactured, produced, grown, or extracted by cooperatives, or that are marketed through cooperatives. This includes fertilizer, diesel fuel, and other supplies manufactured, produced, grown, or extracted by cooperatives. As part of the legislation, Congress provided that cooperatives would have the ability to retain the deduction at the cooperative level or pass the deduction through to their farmer members. The Treasury regulations, as currently written, would eliminate needed flexibility.

Senate Passes Co-op Resolution

NCFC Pushing House to Take Up Farmer Co-op Amendment

The U.S. Senate passed, by unanimous consent, S. Con. Res. 119, which expresses the sense of the Senate that public policy should continue to strengthen the ability of farmers and ranchers to join together in cooperative self-help efforts. The measure, which gained 20 cosponsors, had been introduced in late September by the co-chairs of the Congressional Farmer Cooperative Caucus, Senator Blanche Lincoln (D-Ark) and Senator Larry Craig (R-ID). Current Agriculture Committee Chairman Saxby Chambliss (R-GA) and Senator Tom Harkin (D-IA), the panel's current ranking member, were also instrumental in helping to get this resolution approved.

NCFC also continues to work closely with the offices of Representative Sam Graves (R-MO) and Representative Earl Pomeroy (D-ND)—co-chairs of the Congressional Farmer Cooperative Caucus—to see that the resolution (H.Con.Res. 482), expressing Congress' strong support for farmer cooperatives, is passed before Congress adjourns for the year. The measure has 41 co-sponsors in the House, showing the breadth and depth of support for farmer-owned cooperatives in the Chamber. This strong show of support is especially important as the work of Antitrust Modernization Commission—which is looking at whether statutes such as the Capper-Volstead Act are still needed—comes to its conclusion this spring. The Council contacted our entire Congressional delegation, encouraging them to sign onto their respective resolutions. To date, Congressman Fortenberry and Osborne were co-sponsors of H.Con.Res. 482.



Council Management Policy #2(D) provides that minutes must be mailed to all meeting participants. If no written objections are received within ten (10) days of mailing, they are deemed to be accepted and shall be the official record of the meeting. If a written objection is timely received, action will be taken at the next meeting.

Please notify the Council (134 South 13th Street, Suite 503, Lincoln, NE 68508-1901) by December 30 if there are any objections/errors in the minutes as reproduced below. If not, they shall be deemed accepted as distributed.

MINUTES OF THE 61st ANNUAL MEETING - NOVEMBER 17, 2006

CALL TO ORDER

The 61st Annual Meeting of the Nebraska Cooperative Council convened at 8:30 a.m. on Friday, November 17, 2006, in Ballroom I of the Holiday Inn & Convention Center in Kearney. Jim Chism, Vice Chairperson of the Board of Directors, presided.

SPECIAL THANKS

Chism thanked the Participating & Supporting Members and other sponsors for providing today's refreshment breaks and luncheon.

2005/06 FINANCIAL REPORT

Bruce Favinger, Secretary-Treasurer of the Board of Directors, presented the 2005/06 Financial Report. He reported that the Council's Board had reviewed and accepted the 2005/06 Financial Reports and that a full-scope audit in accordance with the appropriate auditing standards had been conducted. Favinger reported that the auditors have expressed an unqualified opinion.

CHAIRPERSON'S REPORT

Dale Piper, Chairperson of the Board of Directors, presented the Chairperson's Report. He introduced and recognized the Council's directors, committee members, and membership for their support of Council programs.

PRESIDENT'S REPORT

Robert Andersen provided the President's Report for the prior year which included the addressment of legislative and regulatory issues; educational programs; as well as the challenges before the association.

WALT COLEMAN

Chism introduced keynote speaker Walt Coleman, a National Football League referee for 17 years. A question and answer period then followed.

RECESS

A short break was observed.

ELECTION RESULTS

Upon reconvening the morning session, Secretary Favinger reported the results of the Active Member Voting Delegate Caucus and Participating Members' elections. The following individuals were duly elected to the Council's Board of Directors:

<u>Board District</u>	<u>Position</u>	<u>Term</u>	<u>Director's Name</u>
I	Manager	3 Years	Jim Chism, Imperial
II	Producer	3 Years	Jerrell Dolesh, Battle Creek
Participating Member		2 Years	Mike Hechtner, CoBank

SENATOR PHILIP ERDMAN

Chism introduced Senator Philip Erdman of Bayard, Vice Chair of the Agriculture Committee. Senator Erdman reported on key ag issues for the 2007 legislative session.

ALLIANCE FOR THE FUTURE OF AGRICULTURE IN NEBRASKA (A-FAN)

Chism introduced Craig Head, Interim Executive Director for A-FAN. He provided information to the membership on the group's mission to promote agriculture in Nebraska as well as on their field activities and scope of services.

Chism adjourned the morning session at 11:20 a.m.

LUNCHEON / HALL OF FAME INDUCTIONS

The membership luncheon commenced at 11:45 a.m. with President Andersen presiding.

After lunch, Chairperson Piper presented a Corian plaque to retiring Board member Mike Maranell of AGP. Mike extended his appreciation to the luncheon participants.

At this time Piper turned the podium over to Andersen for the Nebraska Cooperative Council Hall of Fame Induction Ceremony. Inducted were the following three honorees:

Max Kimmerling of Beatrice
James Ledbetter of Chappell
Frank Stander of Greenwood

At this time, the luncheon was adjourned.

LEGAL, TAX & ACCOUNTING WORKSHOP

At 1:10 p.m., Piper convened the meeting as facilitator. He introduced Rocky Weber, Dave Jarecke, Bill Kutilek, and Tom Jeffers with the Crosby Guenzel LLP law firm. The attorneys addressed the following issues:

- Capper Volstead and Competition
- Directors' Duties of Confidentiality
- Directors' Conflicts of Interest Issues
- Setting Stockholder Qualifications
- Sales Tax Issues
- Credit/Secured Creditor Issues
- NE Dept. of Environmental Quality Enforcement Actions
- Construction Contract Basics
- Miscellaneous Cooperative Related Issues

The attorneys then answered questions from meeting participants.

ADJOURNMENT

Piper declared the meeting adjourned at 2:45 p.m.

Respectfully submitted,
Bruce Favinger, Recording Secretary

Mike Maranell (at podium) is recognized for his service on the Council's Board of Directors.



Bruce Favinger, Board Secretary-Treasurer, provides the financial report at the Annual meeting.

Scenes from the 2006 Annual Meeting



The opening session of the 2006 Annual Meeting.



Attorneys from Crosby Guenzel LLP (L to R) Tom Jeffers, Rocky Weber (at podium), Dave Jarecke, and Bill Kutilek address the LTA Workshop.

CALENDAR OF UPCOMING EVENTS...

December 2006

29 *KRVN/KNEB/KTIC Radio Report

January 2007

3-4 Director Certification Program - Kearney Holiday Inn

5 Graduate Director Seminar 3 - Kearney Holiday Inn

12 *KRVN/KNEB/KTIC Radio Report

17-19 NCCFC Annual Meeting

18-19 AGP Annual Meeting

22 NCC Legislative Advisory Committee Meeting - Lincoln Cornhusker Marriott

26 *KRVN/KNEB/KTIC Radio Report

February 2007

7 Cooperatives For Tomorrow - Lincoln Embassy Suites

9 *KRVN/KNEB/KTIC Radio Report

15 NCC Board Meeting - Lincoln Cornhusker Marriott

21-22 Land O'Lakes Annual Meeting

23 *KRVN/KNEB/KTIC Radio Report

March 2007

9 Co-op Mutual Insurance Annual Meeting

9 *KRVN/KNEB/KTIC Radio Report

20-22 Dairy Farmers of America Annual Meeting

23 *KRVN/KNEB/KTIC Radio Report

26-27 CoBank Annual Meeting

August 2007

13 IA Subdistrict Meeting - Bridgeport

14 IB Subdistrict Meeting - Lexington

16 IIA&B Subdistrict Meeting - York

November 2007

16 NCC Annual Meeting - Kearney

*Broadcast times are:
KRVN: 2:17pm Central
KNEB: 1:15 pm Mountain
KTIC: 2:17pm Central

