

COOPERATION AMONG COOPERATIVES: IS GOVERNMENT INTERVENTION AN OBSTACLE OR A FACILITATOR?

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Summary:

I. Introduction, II. Doctrine, III. ICA Report, IV. Facts Under Analysis, V. Application of Cooperative Principles to the Facts, VI. Conclusion, Bibliography

Abstract:

This article examines the cooperation among credit unions in Puerto Rico, focusing on the development of these entities, the legislation that governs them, and the challenges that arise when requesting the creation of branches. It explores cooperative principles, the doctrine supporting them, and the role of government intervention in this context. The importance of maintaining solidarity among cooperatives to meet common needs and avoid harmful competition between cooperatives is discussed. Specific cases that have generated controversies between cooperatives and the state regulation governing the opening of new branches are analyzed, highlighting the need for transparency and fairness in this process.

I. Introduction:

In the context of cooperation among credit unions in Puerto Rico, this article reflects on the importance of cooperative principles, the meaning of cooperation, and the ideals for relationships between cooperative entities. It questions whether these principles are utopian or if they can be practically applied, considering the need to strengthen solidarity among cooperatives to jointly meet the needs of their members and communities.

II. Doctrine:

Historically, cooperation among cooperatives has been a natural extension of mutual aid among these entities. The reformulation of cooperative principles in 1966 included the sixth principle, which urges cooperatives to collaborate with each other to better serve their members and communities. The importance of cooperation among cooperatives as a universal principle of cooperativism is highlighted as necessary for the adaptation to the competitive business environment without compromising cooperative values and principles.

III. ICA Report:

The report presented to the ICA Centenary Congress in 1995 emphasizes the growing importance of cooperation among cooperatives in a context where large capitalist organizations represent serious competition. There is a trend towards greater unity within the cooperative movement to

face external competition. However, it is observed that some cooperatives have opted to compete with each other, deviating from the principle of cooperation and giving rise to the phenomenon of "branchism." State regulation in Puerto Rico appears to have limited the autonomy of cooperatives by granting the authority to create and authorize the opening of branches to a state body, generating tensions and challenges in the sector.

IV. Facts Under Analysis:

Controversies or disputes between several credit unions in Puerto Rico are analyzed, questioning government authorization to open a branch in an area already served by another cooperative. The lack of transparency and the violation of the intervention rights of one of the affected cooperatives highlights the need to ensure fairness and the participation of all interested parties in these regulatory processes. In summary, the article addresses the challenges and tensions surrounding cooperation among credit unions in Puerto Rico, emphasizing the importance of maintaining solidarity and collaboration among these entities to preserve cooperative values in a competitive and regulated environment.

A. Introduction:

The Bulletin of the International Association of Cooperative Law, No. 59/2021, presents an article by Dr. Dante Cracogna titled "Cooperation Among Cooperatives: Principle or Necessity?" which analyzes the meaning of the term "principle" and the scope of the ideal of cooperation among cooperatives. It reflects on whether these principles are utopian ideals or are capable of a practical application to reduce unhealthy competition between cooperatives.

B. Doctrine:

Throughout history, cooperative principles did not initially contemplate cooperation among cooperatives, but this idea became an essential component with the reformulation of principles in 1966. The sixth principle establishes collaboration among cooperatives to better serve their members and communities. The 1995 Declaration on the Cooperative Identity ratified this, recognizing cooperatives as enterprises that must adapt to compete in non-cooperative environments.

C. ICA Report:

The report presented to the ICA Centenary Congress in 1995 highlights the growing role of cooperation in the cooperative movement in response to the competition from large capitalist organizations. However, some cooperatives have opted to compete with each other, distorting the sixth cooperative principle and promoting practices contrary to solidarity. The lack of adequate regulatory provisions in support of a healthy cooperative ecosystem has allowed harmful competitive actions to endanger the autonomy and independence of cooperatives.

D. Facts Under Analysis:

In 2008, the Puerto Rico Court of Appeals resolved a controversy between two credit unions, one known as Las Piedras and the other as Yabucoeña, which sought to review an administrative determination by the Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico (COSSEC) that authorized the former to open a branch within its service area. The court concluded that cooperatives deserved greater transparency in these cases, guaranteeing equal access to information and procedures for all involved parties. This decision was based on the importance of protecting the economic interest of cooperatives and the provisions of the Cooperative Law, which require considering the impact of new entities on the cooperative movement.

In this case, the affected cooperative had been operating for over 53 years in the area where a new branch was to be created, and the regulator approved the request to open the branch without considering this fact. The smaller cooperative argued that several cooperatives had previously expressed concerns about market saturation due to the presence of other cooperatives in the area. However, the regulator decided that any cooperative with adequate financial and managerial conditions could open a new branch, without considering local market saturation or the banking sector, which established branches without authorization.

As a result, it was determined that prospectively, any cooperative requesting the establishment of a branch that demonstrated acceptable financial and managerial conditions would not be denied its request. The decision was based on the notion that cooperativism could not be viewed in terms of geographical limits.

Upon review, the court determined that opening a branch in an area already served by another cooperative required more transparency. It was argued that all cooperatives should have equal access to information about new branches in their market. The regulator ignored this right, violating the adjudicative process based on a legal norm and a judicial precedent, *San Antonio v. PRCC*, 153 D.P.R. 374 (2001), recognizing that: "The economic interest of a competitor concerned about fair and legal competition in the market is undoubtedly an interest that is not excluded by the concept of 'legitimate interest' that serves as a prelude to any applicant for intervention in the adjudicative processes of an administrative agency" and added that the Cooperative Law, *supra*, in its article 3.01, established that:

"The philosophical foundations of cooperativism and its application through the organization and operation of credit unions are an essential part of the prerequisites for the authorization of a cooperative. The financial and regulatory requirements stem from the clear understanding that cooperativism is a distinct form of economic activity, based on principles specific to this type of organization."

The organization of a new cooperative entity will require an affirmative determination by the Corporation that it is necessary and convenient for the population it will serve and will not unduly affect existing cooperatives, thus contributing to the orderly and adequate development of the cooperative movement in Puerto Rico. The Corporation is empowered to adopt by regulation the evidence, documentation, and information required from proponents and the criteria the

Corporation will use to make the required determination under this section. Except for entities organized or controlled by cooperatives, after their first six months of existence, all cooperatives must have at least thirty-five (35) members who do not have a family link within the fourth degree of consanguinity or second degree of affinity among themselves." Emphasis [in the original].

The court overturned the COSSEC decision on the branch opening and ordered an administrative hearing to justify the requested intervention. The ruling did not elaborate on or discuss the Sixth Cooperative Principle. After years of litigation, another controversy arose when COSSEC authorized the branch opening, and the affected cooperative argued that the decision should have considered whether it would affect existing cooperatives. After the administrative hearing, the branch of Coop. Las Piedras was authorized to operate in the town known as Yabucoa, where the Yabucoa Cooperative was originally established, if it could show that it met the requirements to expand its operations without harming its members and depositors. The COSSEC Board of Directors confirmed this decision, leading to another judicial review. It was argued that COSSEC had erred by not determining if the new branch would affect other cooperatives and by considering insufficient evidence presented by Coop. Las Piedras.

The Appellate Court then expressed that Law No. 255, *supra*, granted credit unions the opportunity to participate fully in the financial market, making them more competitive and prominent in the country's economic development. It indicated that the growth and strengthening of cooperativism were of high public interest, promoting broad and full participation in financial services markets and full access to financial services. Among the powers granted to COSSEC was the authority to issue licenses, permits, and authorizations. Article 3 of Law No. 114, *supra*, 7 L.P.R.A. sec. 1334b(c)-(2).

It provided that the 2002 Regulation of the Cooperative Credit Union Law, Regulation No. 7051, established criteria that allowed the sustained economic development of credit unions, fostering the liberalization of authorized activities and investments and the flexibility of their operations. Regarding the management of these branches, Law No. 255, *supra*, contemplated that they could be established either as mobile units or as permanent establishments, provided they complied with current regulations and, in any case, with the prior approval of COSSEC. With the legislative authority conferred, COSSEC instituted in Section 12(a) of the Regulation the institutional public policy regarding the establishment of branches, stating that:

"[...]

i. The Corporation will carry out a weighted evaluation of the circumstances and elements that influence the establishment of new branches, considering the financial condition of the cooperative requesting the establishment of a branch and the financial impact on the requesting cooperative. The geographic location of the requesting cooperative and the effects of competition between cooperatives will not be considered as evaluation factors. However, the Corporation may use all information and data at its disposal to evaluate the request, regardless of its nature."

Therefore, as long as the requesting cooperative met the financial and operational capacity conditions required by law, it would receive authorization from the regulator to establish a new branch. As a result, the trial court decided to grant a preliminary injunction, suspending the opening

of the branch until a hearing was held to address the merits of the case.

The analysis of the aforementioned case, decided in 2008, contrasts with the recent cases handled by COSSEC, which have generated controversy. For instance, the San Antonio Cooperative challenged the authorization of a branch opening in Juana Diaz, already served by several cooperatives. The recent decision to approve the establishment of Coop. Juana Diaz caused the affected cooperative to argue that this decision would adversely affect its market share, contributing to harmful competition with a fellow cooperative. In this case, COSSEC authorized the branch opening based on the legal provisions and regulations that granted it discretionary authority to evaluate and approve branch openings without considering the geographic location and the effects of competition between cooperatives on a healthy cooperative ecosystem.

Upon reviewing these facts, we note that the lack of transparency and the absence of a clear and consistent regulatory framework have led to repeated disputes between cooperatives, resulting in prolonged legal battles and tensions within the sector. This situation underscores the need to ensure that cooperative principles, especially the sixth principle of cooperation among cooperatives, are upheld and that the regulatory processes are fair, transparent, inclusive, and appropriate to the needs of the cooperative sector.

E. Application of Cooperative Principles to the Facts:

Applying cooperative principles to the analyzed facts reveals that cooperation among cooperatives is crucial to avoid harmful competition and ensure sustainable growth. The sixth cooperative principle emphasizes the need for cooperatives to collaborate to better serve their members and communities. In the cases discussed, the principles of transparency, fairness, inclusivity, and actions appropriate to ensure a healthy cooperative ecosystem were compromised, leading to conflicts and legal disputes. Ensuring that cooperatives work together and that regulatory processes support the sixth cooperative principle can help mitigate these challenges and foster a more harmonious cooperative environment.

F. Conclusion:

In conclusion, cooperation among cooperatives is essential to uphold the principles of cooperativism and ensure sustainable growth. The analyzed cases highlight the need for transparency, fairness, inclusivity, and actions appropriate to ensure a healthy cooperative ecosystem in the regulatory process to avoid conflicts between cooperatives and promote collaboration. By adhering to cooperative principles and ensuring a fair and supportive regulatory framework, cooperatives can better serve their members and communities, contributing to the overall development of the cooperative movement in Puerto Rico.

Bibliography:

- Cracogna, Dante. "Cooperation Among Cooperatives: Principle or Necessity?" Bulletin of the International Association of Cooperative Law, No. 59/2021.
- Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico (COSSEC)

regulations and legal provisions.

- Relevant court cases and legal precedents related to cooperative branch openings in Puerto Rico.