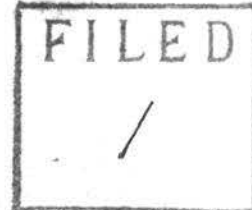


5590-455-1

BUILDING AND LOAN:

- A - Power of Directors to amend by-laws.
- B - Power of Directors to amend by-laws when present by-laws specifically give Board such power.

April 27, 1933.



Bureau of Building and Loan Supervision
State Capitol
Jefferson City, Missouri

Attention: Chief Clerk *Mr. Aker*

Dear Sir:

In your letter to this office dated April 19, 1933, you request an opinion as to whether Directors of the Association may provide in their by-laws to amend, change, or repeal at any regular meeting of the Board of Directors by a two-thirds vote of the members the by-laws of their Association.

Sec. 5590, Laws Mo. 1931, under the heading of "Building and Loan Associations" provides:

"The shareholders of such corporation may make and adopt all necessary by-laws for the government of the affairs and business of the corporation, provided that the same shall not be inconsistent with the Constitution or laws of the state. A copy of such by-laws shall be filed with the supervisor of building and loan associations, and such by-laws, and any amendments thereto or changes therein, shall not be in force and effect, and no action shall be taken thereunder until the same are approved by the supervisor of building and loan associations as being practically and financially sound and in the best interest of the shareholders."***

Sec. 4553, R.S. Mo. 1929, under the heading "Corporations" provides:

"By-laws to direct a manner of taking the vote of the stockholders on the question of increasing or diminishing the number

of directors or trustees, of changing the corporate name, may be made by the directors of the corporation for the time being."

It will be noticed therefore that neither under the general incorporation laws or under the sections of the statutes dealing specifically with building and loan associations are the directors of a corporation, given the power generally to make, amend or repeal by-laws.

The directors under section 4553 supra can only make by-laws concerning the matter stated; Brinkerhoff Co. vs. Lumber Co. 118, No., 447; 24 S.W. 129; and even these exceptions are not included in Section 5590 supra referring to building and loan associations.

Indeed as will be noticed by reference to Section 5590, Laws No., 1931, these duties are specifically entrusted to the shareholders of such corporations.

In the case of Kliz et. al. vs. Polish etc. Parish, 137, No. App., 347; 118 S.W. 1171, the Court held:

"By-laws of the corporation must be adopted by the members of the corporate body and cannot be changed by the directors unless the charter or fundamental law so provides."

In Endlich on "Building Associations", Sec. 371 the author says:

"Ordinarily this power (to make by-laws) resides in the corporate meeting of the stockholders to be exercised by them in the same manner in which the charter directs them to exercise other powers or to transact other business.

"It is only by express charter provision that this power can be delegated to particular officers or body of members, e.g. the Board of Directors."

In the case of Garlick et. al. vs. Mutual Building and Loan Association, 129, Ill. A. Reports 403, l.e. 412, the Court held:

"Such associations can under the statute only adopt by-laws at a meeting of the stockholders."

April 27, 1933.

Examination of the statutes has not brought to light any provision whereby directors have the authority to make by-laws or to amend them after they are made and adopted. The general rule of law applicable in such cases is that the power to alter, amend, and repeal the by-laws is vested in the same body in which is vested the power to enact them in the first instance, that is the shareholders and in such body only, 14 Corpus Juris 358.

It may be contended, however, that even though the statute vests the power to make by-laws in the shareholders, nevertheless if the shareholders see fit to delegate that power to the Board of Directors and do so, then the Board of Directors may properly exercise such power. In answer to this contention, we quote from 14 Corpus Juris 354.

"The power to make by-laws cannot be delegated to a Subordinate Board or Officers by the body in which it is expressly and exclusively vested by the charter or governing statute; and it has been held that a by-law which surrenders to the directors the exclusive power to alter or amend the by-laws is unreasonable, illegal, and ultra vires."

To the same effect, see *Alters vs. Journeyman, etc., "Association"* 19, Pa. Super. 373.

The above point has been passed on by this office in reference to the ratification of by-laws in connection with other savings and loan associations, in both instances in which the by-laws providing the Board of Directors may amend or repeal by-laws have been held inconsistent with the laws of Missouri because such power is vested in the shareholders only.

From the foregoing it is the opinion of this office that the Board of Directors does not have the power to amend the association's by-laws even though the present by-laws specifically give the Board such power, this power being vested in the shareholders of the association.

Very truly yours,

APPROVED

ROY McKITTRICK
Attorney-General

JOHN W. HOFFMAN, JR.
Assistant Attorney-General