

5604 R. S. Mo. 1929

Building and Loan Associations: No Power to give notes to retire stock.

April 29, 1933

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

Attention: Chief Clerk. *New*

Dear Sir:

In your letter of April 13, 1933, you request an opinion from this office as to the legality of Building and Loan Associations giving notes to retire either full paid or matured stock under Section 5604 R. S. Mo. 1929. This section, however, has been amended in Laws of Missouri 1931.

Cases are few upon this point. Conflicting opinions will be found in cases arising in jurisdictions other than Missouri. We must of necessity however, confine ourselves to the law as we find it laid down in the cases arising in Missouri. No good purpose could be gained by an exhaustive review of authorities from other jurisdictions, for we regard the point as settled in this State.

In the case of Appeal of Powell, 93 Mo. A. 296, Judge Broadhus held:

"* * * In this instance, the defendant corporation, instead of complying with the directions of the statute quoted, when the stock in question was presented, by retiring and canceling it, and satisfying the holders from the cash monthly receipts in its treasury, resorted to the expedient of giving the notes of the association. If the cash receipts of the month on hand had not been sufficient for that purpose, then the retirement of the stock could not have been legally accomplished. This is too plain for controversy. Such a course of procedure wholly ignores the explicit mandatory provisions of the statute. It was a

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flagrant violation of the association's charter." * * * It is true that if the by-laws of the defendant authorized the borrowing of money, the statute permitted it to so do for temporary purposes, but only for temporary purposes." * * * But money borrowed for such purposes could not, under the statute, be applied to withdrawals. In such cases the funds must come out of the monthly cash receipts of the corporation, acquired through the ordinary channels of its business." * * *

This case has never been overruled in Missouri, and it is therefore the opinion of this office that a Building and Loan Association is without the power to give notes in order to retire full paid or matured stock under Section 5604 R. S. No. 1929.

Very truly yours,

JOHN W. HOFFMAN, JR.,
Assistant Attorney General.

APPROVED:

Attorney General.

JWH:MM