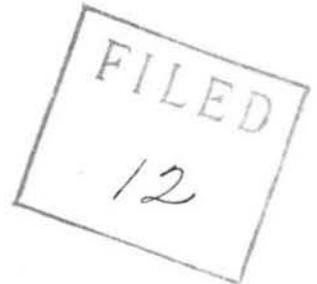


BUILDING AND LOAN ASSOCIATION:

Definintion of what are receipts under Section 5604
Revised Statutes Missouri 1929, amended 1931, page 155. ✓

January 30, 1933

Bureau of Building and Loan Supervision
Jefferson City, Missouri



Gentlemen:

This office acknowledges receipt of your letter dated January 23, 1933, attaching letter of Cape Girardeau Building and Loan Association dated January 19, 1933, which latter letter is in part as follows:

"This Association is now requiring notice from it's stockholders who wish to withdraw their certificates of stock in this Association and intend to pay withdrawals in accordance with Section 5604 of the Building and Loan Laws of Missouri. We would like to ask you to give us your interpretation of this section which states, "At no time, however, shall more than one-half of the receipts of the corporation for any fiscal month, etc." We would like to know whether one-half of the receipts should be interpreted as one-half of our income from dues, interest and penalties or whether the repayment of loans in full or part should be included."

Your letter of date January 23, 1933, is in part as follows:

"Please note the enclosed letter received by this Department, requesting an opinion regarding Section 5604 of the Building and Loan Laws of Missouri".

The by-laws of the Cape Girardeau Building and Loan Association nor a share of its stock are not before us.

The laws contained in the Revised Statutes of Missouri 1929 with reference to Building and Loan Associations were repealed and are now found in Session Acts of 1931, pages 141 to 165 inclusive.

Section 5585 of the above laws provides that not less than twenty-five persons may associate themselves together with the

intention to constitute a corporation by acquiring real estate, making improvements thereon, removing encumbrances therefrom, by advancing to its members out of a fund accumulated by the payment of periodical installments or otherwise, a sum equal to the par value of their shares, and the corporation is for the further purpose of accumulating the savings of its members to be returned to such of its members who do not obtain advances for any of the purposes above mentioned when the savings and the profits arising therefrom shall amount to a certain sum per share, as specified in the Articles of Agreement.

Section 5586: That the limit of the capital to be accumulated, the number of shares; the par value of each; the number of shares subscribed and that the first month's dues have been paid thereon shall be stated in such Articles of Agreement.

Section 5588: That any such association may increase its capital stock in the manner provided in the last named section.

Section 5593: That the object of such corporation shall be the accumulation of a capital in money, to be derived from payments by its members in periodical installments or otherwise, and from the profits and accumulation arising from the investment of such payments. The capital may be issued in prepaid or installment shares. The certificate of stock together with the by-laws and the provisions of Chapter 35, shall determine the liability of the association to the stockholders and the relations of the stockholders to the association. Capital, as accumulated, shall be loaned or advanced to members of the corporation who shall give security for and make payment of all dues, interest, premium and fines until each share so advanced upon shall reach its full value. Such association conditionally may acquire title to real estate and may accumulate from the earnings a "contingent fund" for the payment of contingent losses and an "undivided profit fund" Both of which may be loaned and invested as other funds of the association. At any time the association has funds in excess of the amount needed for loans to its members and the payment of matured shares and withdrawals and borrowed money, it may invest in other obligations.

Section 5594: The moneys accumulated from payments on account of stock, interest, premium and fines, or from any other source, after proper allowances for expenses and other provisions as to the withdrawal and cancellation of shares and accumulation of contingent fund, may be offered to shareholders or shareholder who shall bid the highest premium for the preference of a loan or advance on his or their respective shares. The directors may make loans to others than stockholders on the security specified, and may dispose of such loans and investments as funds may be needed for making loans to members or for the other purposes of the association.

Section 5595: Premiums or loan fees for loans or advances shall consist of a percentage on the amount to be loaned, advanced or borrowed, and shall be a charge, in addition to interest as aforesaid, on the amount loaned, and such premium or loan fee together with interest and fines paid, shall be received by the association as a profit on the amount of capital invested in said loan.

Section 5597: That when a member procures a loan or advance from the association he shall transfer and pledge his shares of stock therein to be held until the value thereof has been fully paid and until all payments of dues, interest and fines have been made and all other liens thereon discharged.

Section 5600: Any such corporation may purchase, hold, convey, lease or mortgage real estate purchased at the foreclosure of any mortgage, deed of trust, judgment, lien or other encumbrance held by it.

Section 5601: A shareholder may repay a loan at any time upon the terms and conditions fixed in its by-laws. If there be no by-laws on the subject, then on a settlement the borrower shall be charged with the full amount of the loan, together with all installments of dues, interest, premium and fines and other sums of money then remaining due and unpaid, and shall receive and be given credit if he desires to surrender his shares, for the withdrawal value of the shares so pledged in accordance with the rule hereinafter provided for the withdrawal and cancellation of shares.

Section 5602: Every association shall accumulate from its earnings a contingent fund for the payment of contingent losses and at least three per cent of the net earnings shall be set aside in February and August of each year to such fund until it reaches at least five per cent of the total assets. All losses shall be paid out of such fund until the same is exhausted and whenever the amount in such fund falls below five per cent of the assets shall be replenished by semi-annual appropriations of at least three per cent of the net earnings until it reaches five per cent. All losses shall be assessed in the same proportion and manner on all members after the amount in the contingent fund has been applied to the payment of same.

Section 5603: Each shareholder shall pay a sum fixed as dues for each share held by him, as a contribution to the capital of the association until such payments aggregate the ultimate value of such share or shares. Whenever a share shall be matured and unpledged to the association, payments thereon shall cease and the holder may withdraw same as provided in this act. If not withdrawn, such stock shall become fully paid in a sum equal to the matured value of such share; not more than one-half of the funds in the treasury of the association can be applicable to the payment of matured shares without the consent of the directors; the directors may in their discretion retire the unpledged full paid shares or prepaid shares

at any time; and may retire installment shares at any time after the expiration of three years from the date of issue thereof by enforcing the withdrawal of the same, provided that the matured shareholders shall be entitled to receive and shall be paid the full value of their shares at the time, less all fines and their proportionate part of any loss. Borrowing shareholders shall in addition to the dues aforesaid pay interest or premiums on each share borrowed upon until such shares shall reach the ultimate value thereof, when the shares shall be cancelled.

Section 5604: This section prescribes the conditions on which shareholders may withdraw from the association among other provisions, and the vital one so far as the question in hand is concerned is as follows:

"At no time, however, shall more than one-half of the receipts of the corporation for any fiscal month, and, when the corporation is indebted on matured shares of an earlier series, not more than one-third of said receipts, be applicable to the demands of the withdrawing shareholders, or of shareholders, whose stock has been forfeited in the manner hereinafter provided, without the consent of the directors."

The first legislative enactment touching the question of what portion of the funds of the association to be used for withdrawals is found in Session Acts 1887, page 111. That provision was as follows:

"At no time however shall more than one half of the un-loaned funds in the treasury of the corporation be applicable to the demands of the withdrawing shareholders without the consent of the board of directors".

The conditions prescribed in the above quoted law was amended by the Laws of 1895, page 111, Section 15, so that the section read that one-half of the receipts of the corporation for any fiscal month could be used to pay withdrawals instead of one-half of the unloaned funds in the treasury of the corporation. The section was carried in the same form from 1895 until the present time.

From the brief outline of the statutory provisions with reference to building and loan associations, it is clear that such associations are designed for the accumulation of the money of the members by periodical payments into its treasury, such money to be invested from time to time in loans to the members on real estate or on their shares of stock, the borrowing member to pay interest and a premium therefor and also continuing his fixed periodical installments, all of which payments together with the non-borrowers' payments including fines, forfeitures and fees, go into a common fund until such time as the installment payments and the profits amount to the

face value of all the shares in the association matures the certificates of stock and cancels the borrower's debt.

The whole working of the law under building and loan associations indicates mutuality or a purpose to assist all the shareholders. All of the contributions to the treasury of the association after expenses and losses are paid may find their way into the capital stock of the corporation, so that each member has a contributed interest therein. The capital stock is a common fund contributed by all of the members. Therefore when a loan is paid to the corporation it is but the payment into the treasury of a common fund theretofore paid in by the members.

The case of Powell v. Doyle, 93 Missouri Appeal, 296, was a case where the association undertook to retire stock in the association and to issue the notes of the association in lieu of the shareholders' proper proportion of the monthly cash receipts. The statute read then as it does now as to withdrawals. On the view of the court on what was meant by the term "cash receipts", the court at page 301 of the opinion said:

"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 flagrant violation of the association's charter".

And further on the same page:

"In such cases the funds must come out of the monthly cash receipts of the corporation, acquired through the ordinary channels of its business".

Money acquired through the ordinary channels of the association's business of course would include payment of loans, as well as collection of assessments, dues, premiums, fines, etc.

In our opinion the term "one-half of the receipts of the corporation for any fiscal month" includes loans theretofore made by the corporation and paid into its treasury during such fiscal month for in that way will the mutuality of the association be carried out and the withdrawing member who has kept his obligations with the association be paid his proper share of a fund he has helped build.

Yours very truly,

GILBERT LAMB
Assistant Attorney General.

APPROVED: _____
Attorney General.