

BUILDING AND LOAN: Shares pledged as security for loans not to be sold as collateral but must be withdrawn and withdrawal value applied on loans.

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Hon. Ira A. McBride
Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Mr. McBride:

This is to acknowledge your recent letter which reads as follows:

"My examiners report that a certain Missouri building and loan association is making loans to their shareholders on their stock accounts and treating the stock certificates the same as a bank treats its collateral security. In other words, the association will advance the shareholder fifty per cent of the withdrawal value of his certificate taking from him a note of obligation, and upon failure to meet the note of obligation when due, the stock is put up and sold and the association profits the difference between the note and the total amount of the certificate.

This department looks with disfavor on such a practice. We believe it is illegal, but before doing anything about the matter, we desire to have your opinion.

As you know, a great many associations are unable to meet the withdrawal demands of their shareholders and in most cases this is no fault of the association, however, on the other hand it is no fault of the shareholder that the association is unable to pay him the cash value of his certificate or to loan him ninety per cent of his certificate as provided for by law. We feel that since the law protects

the association against a run in times of stress and strain such as we are just going through, that the same law, out of fairness and justice, should protect the rights of the shareholder against having to forfeit his interests in the certificate at fifty cents on the dollar.

This Department will appreciate your opinion on this matter at your convenience."

The second paragraph of your letter expresses our views concerning the matter you write. We quote:

"This department looks with disfavor on such a practice. We believe it is illegal, * * * * *."

Section 5597, Laws of Missouri, 1931, page 151, contains this provision:

"Provided, however, that the shares of the particular corporation without other security, may, in the discretion of the board of directors, be accepted as security for loans or advances, to an amount not exceeding nine-tenths of the withdrawal value of such shares at the time, as shown by the books of such association."

The statute, supra, provides associations may loan money to its members on shares of stock, without other security, not to exceed, however, nine-tenths of the withdrawal value of such shares. Therefore, if, and when, a loan or advance is made the shares accepted as security are impressed with a lien. You state that a certain Missouri Building and Loan Association is not treating the shares as security for the loan but as collateral and upon default sell same as collateral. The statutes relating to building and loan associations do not permit of such practice. True, an association may loan on the sole security of shares of stock which have a fixed value at the time and if default occurs the shares may be canceled to repay the loan. But they have a withdrawal value and same has not decreased since the loan was made and the loan on which shares are pledged as security may not exceed nine-tenths of their withdrawal value. Thus, there is no guess as to the value of the security and it is

always sufficient to repay the loan at all times. To permit a shareholder to be taken advantage of as you state the association is doing is unconscionable.

We call attention to various provisions of the statutes that sustain our conclusion, i. e., that the shares of stock pledged as security shall not be sold as collateral but same be canceled by withdrawal and the withdrawal value thereof be applied as credit to the loan.

Section 5599, Laws of Missouri, 1931, page 152, provides that when a mortgage is foreclosed the withdrawal value of the shares of stock shall be credited. We quote:

"In the event of such foreclosure, the defaulting borrower, in addition to the amount loaned, as shown by the bond and mortgage or deed of trust given by such borrower, shall be charged with all dues, etc. * * *, and shall have and be given credit for the withdrawal value of the shares pledged and transferred by him as aforesaid, in accordance with the rule hereinafter provided for the withdrawal and cancellation of shares."

Section 5601, Laws of Missouri, 1931, page 153, has this provision:

"A shareholder may repay a loan at any time upon application to said corporation * * * and shall receive and be given credit, if he desires to surrender his shares, for the withdrawal value of the shares pledged and transferred by him as security for said loan, in accordance with the rule hereinafter provided for the withdrawal and cancellation of shares; etc."

Section 5604, Laws of Missouri, 1931, page 155, has this provision:

"Any shareholder * * * wishing to withdraw, * * *, shall, * * * be entitled to receive the amount actually withdrawable at the time of making application for withdrawal * * *."

From the foregoing it is our opinion that upon default by a borrowing member having only shares of stock pledged as security, such shares of stock shall not be sold as collateral but shall be canceled by withdrawal and the amount received after withdrawal placed to the credit of the note or loan, and the excess, if any, be paid to the borrowing member.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

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