

BUILDING AND LOAN SUPERVISOR: Power to appoint local attorney discussed.

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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 letter which is as follows:

"Attached is a letter from the firm of Igoe, Carroll, Higgs & Keefe of St. Louis, which is self-explanatory.

I would like to have you give this Department a ruling on the question raised by Mr. Robert J. Keefe in the inclosed letter."

The appended letter to which you refer reads:

"I mentioned in the letter which I wrote to you today, in answer to your inquiry about some matters pertaining to the Homestead Building and Loan Association, that there is some uncertainty with respect to the appointment of attorneys in a case where the receivership proceedings were instituted prior to 1931 and the attorneys for the receiver were appointed by the Court.

I do not find in the statutes as they were prior to the 1931 amendment any provision authorizing the Supervisor of the Bureau of Building and Loan Supervision to appoint attorneys to represent him as receiver. There is in the 1931 amendment (Laws of 1931, Sec. 5627, p. 163), sub-paragraph 3 (p. 165), the following provision:

'The supervisor shall receive a reasonable compensation for his services in managing and conducting the affairs of such association and/or for his services as receiver, which, together with his necessary expenses, including his fees as supervisor or compensation as receiver and the fees of the local attorney, if one be employed by him, together with his necessary expenses, are to be paid out of said assets and to be fixed by the court, but shall not exceed 5% of the assets of such association.'

The above reference to 'the local attorney, if one be employed by him' is the only statement I can find in the statute which might be construed as authorizing the supervisor to appoint an attorney. I am doubtful of the proposition that this authorizes the appointment of an attorney to represent the supervisor in his capacity as receiver as distinguished from his capacity in performing other duties as superintendent. Ordinarily, in receivership actions the attorneys for the receiver are appointed by, or at least approved by, the court.

I brought this matter to the attention of Mr. Igoe and he suggested that it might be well for you to obtain the opinion of the Attorney General upon this question. I believe it would be advisable to do that."

Section 5579, Laws of Missouri, 1931, p. 142, provides in part the following:

"The state bureau of building and loan supervision and the supervisor of building and loan associations shall have charge of the execution of the laws relating to mutual savings fund, building and loan associations, etc. * * * * *
The supervisor of the bureau of building and loan associations shall have the power to institute in the name of the state of Missouri and to defend suits in the courts of this state and the United States. * * * "

Section 5622, Laws of Missouri, 1931, p. 160, reads as follows:

"It shall be the duty of the supervisor of building and loan associations of the state of Missouri to administer and enforce the provisions of this article."

Thus, as supervisor of building and loan associations you have complete charge and control. Now as supervisor do you have power to appoint an attorney or who is the attorney that represents your Department as supervisor? The statute does not provide for appointment of an attorney by you. The Bureau of Building and Loan Supervision is a department of the State and it devolves upon the Attorney-General, as part of his duties, to advise and act if you desire an attorney.

Section 11274, R. S. 1929, reads as follows:

"When required, he shall give his opinion, in writing, without fee, to the general assembly, or to either house, and to the governor, secretary of state, auditor, treasurer, superintendent of public schools, warehouse commissioner, superintendent of insurance, the state finance commissioner, and the head of any state department, or any circuit or prosecuting attorney upon any question of law relative to their respective offices or the discharge of their duties."

Section 11275, R. S. 1929, reads as follows:

"The attorney-general shall appear, on behalf of the state, in the supreme court, and have the management of and prosecute, or defend, as the case may require, all appeals and writs of error to which the state is a party, other than those in which the name of the state is used as nominal plaintiff in the courts below."

Section 11276, R. S. 1929, reads as follows:

"The attorney-general shall institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect

the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved."

Section 11277, Laws of Missouri, 1933, p. 177, reads in part as follows:

"The attorney-general may at the request of any officer, board, Bureau, Commission, or Institution, or agent of the State, assign an Assistant Attorney General to perform the duties prescribed by section 11275 of this article before or upon the behalf of such officer, Board, Department, Bureau, Institution or Commission or agent, and may upon request as aforesaid from time to time re-assign such Assistant."

You have called upon this Department on numerous occasions for advise concerning your duties as Supervisor of the Bureau of Building and Loan Associations and, as under the statute, we performed our duty by giving you such opinions.

Section 5624, Laws of Missouri, 1931, p. 161, provides in part as follows:

"It shall be the duty of the supervisor, in person or by one or more persons by him appointed for that purpose, who are not officers or agents of or in any manner interested in any building and loan association, to make a full and careful examination of the affairs of any and all associations in the state as often as, in the discretion of the supervisor, the condition of any association may require etc. * * *"

Section 5626, Laws of Missouri, 1931, p. 162, provides in part as follows:

"No association shall cease to do business or attempt to make a voluntary assignment of its assets or in any other manner to liquidate its

affairs prior to the maturity of all of its stock, except with the consent of two-thirds of its stockholders and the approval of the supervisor of building and loan associations."

And further,

"If any association attempts to make such an assignment, the supervisor shall upon his own initiative take charge of the association and of its assets and shall manage and conduct its business."

And further,

"Or if it shall appear to the supervisor from any report of such associations or from any examination made or caused to be made by him, or from any knowledge or information obtained from any other source, that such association has committed a violation of its charter or is acting unlawfully, or that such association is conducting its business in an unsafe or unauthorized manner, or that the assets of any such association are insufficient to justify the continuance of business by such association, or it shall appear to the supervisor that it is unsafe or inexpedient for any such association to continue to transact business, the supervisor shall communicate the fact to the officers or directors; such officers or directors shall be allowed sixty days in which to make the assets sufficient or to correct the illegal practices."

And further,

"In case such assets are not made sufficient, or the illegal practices corrected within a time fixed by the supervisor, or if the directors request the supervisor so to do, the supervisor shall take charge of the association and its assets and manage and conduct its business."

Section 5627, Laws of Missouri, 1931, pp. 163 and 164, provides in part as follows:

"Upon taking charge of an association under any of the provisions of this article, the supervisor

shall as soon as practicable, ascertain by a thorough examination of its affairs, and appraisal of its assets, its financial condition; and if from such examination and appraisal it appears to the supervisor of such association is in a condition to safely resume business, he shall return the assets and the conduct of the association to its officers and directors."

Thus, as supervisor other duties are imposed upon you relative to building and loan associations whose conditions are as those mentioned in the foregoing two sections.

Section 5626, supra, also provides:

"The possession of the supervisor in charge of the affairs and assets of such association shall be construed as the possession of the state of Missouri and that the property is in custodia legis and the placing of said property in the hands of said supervisor by the directors and/or the taking of possession by the supervisor and his appointment as receiver of said property by the circuit court, as provided in this article, shall not be construed as a proceeding on account of insolvency or that said association has committed an act of bankruptcy; but the said supervisor shall promptly proceed and continue to collect dues and interest from the stockholders and borrowers of the association and may bring and/or defend suits in the name of the association and may authorize and direct the foreclosure of deeds of trust and/or mortgages, and pay its operating expenses and in his discretion its debts to its general creditors, employ such help as he needs to manage and operate said association, including, if necessary, a local assistant deputy to represent the supervisor in his absence from the county, and a local attorney to represent him in all legal proceedings; * * *

Section 5627, supra, also provides:

"The supervisor may at any time after he takes charge of the assets and the affairs of an association, institute proceedings in the circuit court in the city or county in which said association has its principal office, and have himself appointed temporary receiver, until it is determined whether or

not such association can resume business; or appointed receiver for the purpose of winding up its affairs, and the court shall upon such application, appoint the supervisor such receiver; and as such receiver the supervisor under order of the court in such proceeding make compromise and settle with the borrowers of such association the amount of credit to be allowed any loans on account of the value of the stock held as collateral to such loans, etc."

and further,

"The supervisor shall receive a reasonable compensation for his services in managing and conducting the affairs of such association and/or for his services as receiver, which together with his necessary expenses, including his fees as supervisor or compensation as receiver and the fees of the local attorney, if one be employed by him, together with his necessary expenses, are to be paid out of said assets and to be fixed by the court, but shall not exceed 5 per cent of the assets of such association. Any compensation received by the supervisor and/or as receiver as provided in this article other than his actual expense incident thereto and the fee of the local attorney, if one be employed by him, shall be turned in to the state treasurer for the credit of the department of state building and loan supervision."

From a reading of the above sections it will be seen that the supervisor upon taking charge of a building and loan association may do same as supervisor or as temporary receiver or as receiver. Section 5262, supra, provides that when the supervisor takes over an association as supervisor and/or temporary receiver in order to reorganize it that he shall have the power to appoint a local attorney to represent him in all legal proceedings (hereinafter limited). And Section 5627, supra, provides the fee and limits the amount thereof, of the local attorney, if employed, shall be paid out of the assets of such association and is fixed by the court.

Section 5628, Laws of Missouri, 1931, p. 165, reads as follows:

"ATTORNEY-GENERAL TO ACT.--Such court proceedings shall be conducted by the attorney-general of the state, and in the name of the State of Missouri as plaintiff, at the relation of said supervisor. The actual expenses of the attorney general shall be paid out of the building and loan supervision fund in carrying out the provisions of this section."

Thus, Section 5628 provides that all court proceedings necessary and incident to the taking over of a building and loan association by you as supervisor, temporary receiver or receiver, shall be instituted by the Attorney-General. And, Section 5626 provides that when you have taken over an association as supervisor and/or temporary receiver for the purpose of operating it that you have the right then only to employ a local attorney to assist you in all legal proceedings. Such legal proceedings would be for the purpose of collecting assets, payment of claims etc, and to advise the local "assistant deputy" but such local attorney may not represent you in court proceedings instituted by or against you. We again emphasize the fact that all suits are brought in the name of the State of Missouri, Section 5579, supra. A local attorney means one living and residing where the home office of such association is located.

The law does not provide for the appointment of an attorney either local or general to represent you or do anything in your behalf when you are appointed receiver, such being required of the Attorney-General.

From the above and foregoing we have shown that you as supervisor have complete charge and control over all building and loan associations authorized to do business in Missouri; it being part of your duties to examine into their affairs to ascertain if they are complying with the statutes. If an association is not conducting its business in the manner prescribed by law then it becomes your duty to take charge of it and conduct its business for it. After taking over such association, if it is possible or advisable to reorganize it and return the management of same to its board of directors, then such is your duty. However, if such association's affairs warrant the liquidation thereof then you are appointed receiver by the court which changes your status regarding that association from supervisor to receiver. When you are appointed receiver you may not appoint an attorney to represent you as such. The statute then requires the Attorney-General to perform all legal matters for you. Even now any questions arising as to your receiverships you submit to us and we advise you accordingly, and the opinion requested in this instance illustrates this fact.

The enclosed letter shows that the association mentioned therein is in receivership for the purpose of winding up its affairs and that you have been appointed receiver. Mr. Robert J. Keefe, writer of the letter addressed to you, expresses doubt as to your capacity to appoint an attorney when an association is in your custody as receiver. We quote:

"I am doubtful of the proposition that this authorizes the appointment of an attorney to represent the supervisor in his capacity

as receiver as distinguished from his capacity in performing other duties as superintendent."

It is our opinion that (1) this Department is required to represent you as supervisor on all matters concerning the Bureau of Building and Loan Associations; (2) that when it becomes necessary for you to take charge of an association, then this Department is required to file all court proceedings necessary and incident thereto; (3) that when you take charge of an association you may appoint a local attorney to represent you and/or the local assistant deputy while a plan of reorganization is being effected or until you return the business affairs of the association to its board of directors. ~~But the duties of such local attorney shall not be to represent you in the bringing or defending of any suit in court, as such is required of the attorney-general;~~ (4) That if an association is placed in your care and custody as receiver by the court, then only this Department represents you as is required by the statute. Therefore it is unnecessary to pass upon the question submitted, as to whether you appoint the local attorney or must his appointment be approved by the court, as you or the court may not do same but the statute requires such duties to be performed by the Attorney-general. We are mindful of the custom heretofore existing relative to the appointment of local attorneys when associations are in your custody as receiver, but such, in our opinion, violates the spirit as well as the letter of the statute.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McNETTRICK
Attorney-General.

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