

BUILDING AND LOAN COMPANIES:

Proceedings for merger examined.

2-9

February 6, 1934



Honorable Ira A. McBride
Supervisor Building and Loan Companies
Jefferson City, Missouri

Dear Mr. McBride:

We are acknowledging receipt of your letter in which you inquire as follows:

"I submit to you herewith all papers in connection with the proposed merger of the Home Building and Loan Association and the Bonne Terre Building and Loan Association of Bonne Terre, Missouri. Before giving our formal approval, however, to the aforesaid merger, this is to ask your opinion as to whether or not they have correctly complied with all of the requirements of Section 5611, laws of Missouri, 1931, providing for such a merger.

For your information and guidance, I am inclosing the notices of their stockholder's meeting, certification of the results of that meeting and other papers in connection with this matter. As soon as you have looked them over, I would be pleased to have you return them to us for our files together with your opinion. "

Section 5611, Laws Missouri 1931, at page 157 deals with the merging of two or more building and loan corporations and provides as follows:

"Any two or more corporations, with the approval of the supervisor of building and loan associations previously had in writing, may unite and become incorporated in one body, with or without any dissolution or division of the funds of such corporations, or any or either of them, or any such corporation may transfer its engagements, funds and property to any other such corporation upon such terms as may be agreed upon by three-fourths of the members of each of such bodies present at the meeting of the members convened for that purpose, by notice stating the object of the meeting, sent through the postoffice to every member, and by a general notice, appearing daily at least one week, or weekly at least two weeks, in some newspaper published at the place of the principal business of the corporation; but no such transfer shall prejudice any right of any creditor of any such corporation to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said corporation for any neglect or misconduct."

Under the provisions of the above section a notice is required to be mailed to every member of the two building and loan companies and a general notice, appearing daily at least one week or weekly at least two weeks, shall be published in some newspaper published at the place of the principal business of the corporation. After the giving of that notice the corporations may merge provided that the terms are agreed upon by three-fourths of the members of each corporation present voting for the merger.

On January 15, 1934, the Bonne Terre Building and Loan Association voted to merge with the Home Building and Loan Association of Bonne Terre, by a vote of 365 in favor of the merger, as against none opposed. On the same date the Home

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Building and Loan Association of Bonne Terre voted to merge with the Bonne Terre Building and Loan Association, by a vote of 59 in favor of the merger, as against none opposed. It appears that the notice of the stockholders' meeting of the Bonne Terre Building and Loan Association, at which the vote was taken, was published in the Star News Register, a weekly newspaper published in the City of Bonne Terre on January 5 and January 12, 1934; it also appears that the notice of the stockholders' meeting of the Home Building and Loan Association of Bonne Terre, at which the vote to merge was taken, was published in the Star News Register, a weekly newspaper published in the City of Bonne Terre on January 5 and January 12, 1934.

We assume from the letterheads that the principal office of both of these companies is in Bonne Terre, Missouri, and since the newspaper in which the notices were published is published in Bonne Terre, Missouri, that portion of the requirement has been complied with.

However, in addition to the notices published in the newspaper the statute expressly requires that a notice stating the object of the meeting be sent through the post-office to every member. The file which you inclosed does not disclose that any notice was ever mailed to the members of these building and loan companies. If the notices were not in fact mailed to each member as required by the statute, then the merger is not legal. However, if the notices were mailed then you should require proof of that fact from each company before approving the merger.

Very truly yours,



FRANK W. HAYES
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

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