

BUILDING AND LOAN
ASSOCIATION:

May become Federal Savings and Loan Associations only by ceasing to do business and voluntarily transferring its assets by two-thirds of stockholders' vote.

3-21
March 17, 1934.



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

Dear Mr. McBride:

This is to acknowledge your letter
as follows:

"Inclosed is a letter from Mr. E. S. Tesdell, General Counsel of the Federal Home Loan Bank of Des Moines, Des Moines, Iowa, raising the question as to whether or not the laws of Missouri authorizes a Missouri building and loan association chartered under the laws of this state to change from a state charter to a federal charter.

"Furthermore, Mr. Tesdell raises the question that if the Missouri statutes make provision for such a change, what are the necessary steps for one of our Missouri associations to take in order to become a federal building and loan association under the Federal Home Loan Bank Act copy of which I am inclosing. Your opinion on the points raised in Mr. Tesdell's letter relative to this matter will be appreciated by this department."

I.

A building and loan association "is purely a creation

of the statutes, having only such powers as the statutes give and such as are necessarily implied," Appeal of Powell and Doyle, 93 Mo. A. 296, l.c. 300.

Section 5593, Laws of Mo. 1933, page 182 provides:

"Any corporation heretofore organized or now existing under the laws of this state relating to 'mutual saving fund, building and loan associations' and any corporation organized in pursuance of the provisions of this article shall have all the powers provided for in this article, and 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, at such time and in such manner as shall be provided in the by-laws, and from the profits and accumulation arising from the investment of such payments.*"

Section 5585, Laws of Mo. 1931, page 144, provides in part the following:

"Any number of persons, not less than twenty-five, who are residents of this state, and who shall have associated themselves together by an agreement in writing, such as is hereinafter described, * * * shall become a corporation on complying with the provisions of this article, and shall remain a corporation, with all powers and privileges, and subject to all the duties, limitations and restrictions, conferred by general

laws upon corporations, except as hereinafter otherwise provided.

Section 5623, Laws of Mo. 1931, page 160, provides:

"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."

Section 5579, Laws of Mo. 1931, page 142, provides:

"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
* * * *".

From the above, it is to be observed that the regulation of building and loan associations is clearly defined by the Legislature, such being the exercise of a police power. The supervisor is called upon to execute the laws relating to building and loan associations. Among other powers conferred upon him is that of examining into the affairs of associations under his custody to the end that he may "correct any illegal practices," (Section 5626, Laws of Mo. 1931, page 162). And failure of an association to desist "illegal practices" (after notice) gives the supervisor the right to seize, reorganize or liquidate it. A statutory receivership and/or liquidation is provided. Foreign corporations are likewise subjected to his supervision but in a limited degree (Laws of Mo. 1931, pages 158, 160). Thus the object of regulating building and loan associations is to promote the general welfare of the people, such associations being quasi-public.

Section 5611, Laws of Mo. 1931, page 157 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."

From the above and foregoing, it is our opinion that only "mutual saving fund, building and loan associations and any corporation organized in pursuance of the provisions of this article" are intended by the Legislature to be the only such corporations that might merge and take advantage of Section 5611, supra. Thus it becomes necessary to determine if a "Federal Savings and Loan Association" is a "'mutual saving fund, building and loan associations' and a corporation organized in pursuance of the provisions of this article", contemplated by Section 5611, supra, to be merged with a State (domestic) building and loan

association, so that the State charter is abrogated.

II.

Section 5 of the Home Owners' Loan Act of 1933, in part provides as follows:

- "(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations", and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

- "(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

- "(f) Each such association, upon its incorporation, shall become automatically a member of the Federal Home Loan Bank of the district in which it is located

or if convenience shall require and the Board approve, shall become a member of a Federal Home Loan Bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members. "

Without deciding the question as to whether a "Federal Savings and Loan Association" is a foreign or domestic corporation (or neither of each) it suffices to say that such associations are not supervised or within the jurisdiction of the supervisor, to-wit:

"* * the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as * * * , and to issue charters therefor * * ."

It is our opinion that a building and loan association may not merge with a Federal Savings and Loan Association under and by virtue of Section 5611, Laws of Mo. 1931.

III.

Section 5626, Laws of Mo. 1931, page 162, provides in part the following:

"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 supervision of building and loan association. * * * "

If an association, now supervised and deriving its right and enjoyment to do business by the laws of this State, attempts to change its character to the end that it would cease to be under the jurisdiction of the State Bureau of Building and Loan Supervision, and/or laws of Missouri, then it would amount to "ceasing to do business". If such domestic building and loan association desires to quit business or make a voluntary assignment of its assets, it may do so upon consent of two-thirds of its stockholders, and approval of the supervisor.

It is our opinion that a building and loan association may make a voluntary assignment of its assets to a Federal Savings and Loan Association prior to the maturity of all of its stock when it obtains the consent of two-thirds of its stockholders and the approval of the Supervisor of Building and Loan Associations.

In this connection we quote from Vol. 9, Corpus Juris, page 997, Article 149:

"* * *, or an agreement whereby one purchases the assets or assumes the business of another, is not unlawful, and may be attacked only by the stockholders of the association which is being absorbed, the courts will not allow the rights of stockholders, either individually or collectively, to be prejudiced thereby; and where the purchasing association acts in such an arbitrary and unauthorized manner that the absorbed association becomes insolvent, equity will set aside the transaction and appoint a receiver on behalf of the minority stockholders of the association so absorbed."

Yours very truly,

APPROVED:

ROY MCKITTRICK
Attorney-General.

JAMES L. HORNBOSTEL
Assistant Attorney-General.

JLH/AFJ

CC - Hon. E.S. Tisdell, General Counsel.