

BUILDING AND LOAN

ASSOCIATION : Building and loan corporation dissolved the same as any other corporation. However, first must comply with Section 5626, Laws of Mo. 1931

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March 21, 1935.



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

Dear Mr. McBride:

This is to acknowledge your letter as follows:

"The inclosed letter from George S. Metcalfe, secretary of the Roosevelt Savings and Loan Association, of St. Louis, is self-explanatory.

In the last paragraph of Mr. Metcalfe's letter, he asks the question 'we will appreciate it if you will advise us what steps to take to surrender the charter and to obtain our bonds.'

This is to request that you advise us as to the answer we should give Mr. Metcalfe relative to the matter of surrendering his charter and obtaining the surety bonds now held by this department as required by the statutes."

Mr. Metcalfe's letter reads as follows:

"Believing that the money offered a Federal Savings and Loan Association by the National Government offered a worthwhile inducement to a small institution, we submitted the matter of conversion to our shareholders, and without effort obtained a favorable

vote of 70% of our total, with no one dissenting. We feel sure that you will understand our reason for taking this step and will agree with us that it is the right thing to do for an Association of our size.

We want you to know that we have the highest regard for you and your department, and believe that the examinations being given by your assistants at this time are as thorough as any in our experience.

We will appreciate it if you will advise us what steps to take to surrender the Charter, and to obtain our Bonds."

A building and loan association is a corporation and created by statute. Its powers and duties and rights are prescribed by the Legislature. Laws of Missouri, 1931, pages 141 to 165, inclusive, and amendments, pertain to "Building and Loan Association." Section 5585 of said Act deals with incorporating of building and loan associations, and said section in part provides as follows:

"* * * shall become a corporation on complying with the provisions of this article, and shall remain a corporation, with all the powers and privileges, and subject to all the duties, limitations and restrictions, conferred by general laws upon corporations, except as hereinafter otherwise provided."

Section 5626, Laws of Missouri, 1931, page 162, in part provides 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 association. * *"

Thus, the above section is a restriction on a building and loan association. If a building and loan association complies with Section 5626, supra, then the question arises as to how it may have its charter canceled. The building and loan laws do not provide for a procedure to surrender or annul a charter. A charter issued by the State may be dissolved in several ways: (1) By operation of law, namely, the expiration of the charter; (2) by order of court in quo warranto proceedings; (3) by non-usage or abandonment of its charter by the corporation.

As to abandonment of a charter by a corporation, we quote from the case of Moore et al. v. Whitcomb, 48 Mo. 543, wherein the Supreme Court of Missouri, page 548, said the following:

"It had itself abandoned these ends and objects, for it is alleged in the petition that the corporation was created for the sole purpose of constructing and operating the railroad; and that purpose, as the petitioner shows, was given up and abandoned. Spencer, C. J., in delivering the opinion of the court in Slee v. Bloom, says: 'The argument is that, being incorporated for twenty years, there exists a corporate capacity for that period, and that although all the functions of the corporation have ceased, yet they may be resumed. The Legislature never meant, nor does the act authorize the conclusion, that the corporation should remain and continue during all that period nolens volens. It was implied that during that period they should do nothing to forfeit their rights, nor surrender them back, nor

do any act tantamount thereto.

* * * * *

Upon the whole we are disposed to hold, in accordance with the decision in Slee v. Bloom, that the facts alleged in the petition sufficiently showed a dissolution of the corporation by a practical surrender and abandonment of its corporate rights and franchises."

However, a building and loan association may not abandon its charter or cease to do business unless compliance is made with Section 5626, supra. However, we assume that Section 5626 has been complied with and it is now only a matter of annulling the charter.

Article I, Chapter 32, R. S. Mo. 1929, relates to "corporations" and Section 4562 provides "how dissolution may be accomplished." This section is lengthy and we shall not quote it. However, two methods are provided for dissolution of a corporation: First, by a suit in equity whereby the court dissolves it, and, second, "by unanimous vote of all the shareholders, a resolution shall be adopted favoring the dissolution of said corporation, after the payment of all debts, claims or bills, then said corporation may be dissolved without suit by filing an affidavit of dissolution with the secretary of state, setting forth the above facts, and when said affidavit of dissolution is filed it shall be taken as prima facie evidence of such voluntary dissolution."

As to the dissolution of the corporation by affidavit, we invite your attention to the case of Hecht Bros. Clothing Co. v. Walker, 35 S. W. (2d) 372.

From the above and foregoing it is our opinion that ~~an association~~ ~~a corporation~~ in order to surrender its charter must first

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comply with Section 5626, supra, and after satisfying the requirements of that section the ~~association~~ could be dissolved the same as any other corporation.

We are returning herewith to you Mr. Metcalfe's letter.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

JLH:EG
Enc.