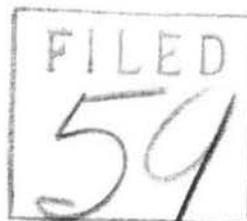


BUILDING AND LOAN: Voting by proxy.

4-18
April 18, 1935.



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

Dear Mr. McBride:

This is to acknowledge your letter dated April 15, 1935, as follows:

"The inclosed letter from Mr. W. B. Henderson, 308 E. 10th Street, Kansas City, Missouri, requests an opinion on the adequacy of a proxy form which he has attached. This is to ask for your opinion on this matter."

The letter referred to in your request, written by Mr. Henderson to your Department on March 27, 1935, reads as follows:

"I am enclosing copy of a form that I forwarded to you with a letter written more than a month ago but have not had a reply.

It is very important that I hear from you as early as possible as to whether the enclosed form contains any objectionable features from the standpoint of your department or the Attorney-General's office.

I am not asking you at this time to pass upon whether you will permit the assets of the Franklin Savings & Loan Association to be 'assigned'.

Any move of the kind contemplated will have to be preceded by securing the signatures of the members of the association to some kind of a form authorizing us to take action. Even though the assignment of the assets may be subsequently approved, you might find it necessary to qualify your approval or withhold it because the form of the proxy signed by the members is not in the opinion of the Attorney-General's office sufficient.

Our attorney is of the opinion that an ordinary proxy will not answer the purpose but he thinks the enclosed form is sufficient if it meets with the approval of your department and the Attorney-General.

He feels that no form would be sufficient if it did not meet with the approval of your department and the attorney-General's office."

The form of proxy appended to Mr. Henderson's letter in part reads as follows:

"NOW THEREFORE, the undersigned member of the Franklin Savings & Loan Association and owner of _____ shares of said Association hereby consents to and authorizes and directs the Board of Directors of said Association to exercise their own judgment about the transfer or assignment of the assets of the Association, or the reorganization of the Association into a Federal Savings and Loan Association, or any other type of financial institution or to merge said association with another savings and loan association, or any other type of financial institution, or to take over other building and loan associations, or other types of financial institutions, or to take any other step in the interest of the members that has the approval of

the Supervisor of the Bureau of Building and Loan Supervision of Missouri and to accomplish this purpose I constitute and appoint the Board of Directors of the Association as now or hereafter constituted, or a majority of them, attorneys and proxies, authorizing them to vote for me in my name at any general, special or adjourned meeting of the shareholders and/or stockholders of the Association at which I am not personally present, on any such proposition presented with the approval of the Board of Directors."

It is to be noted that the above form of proxy directs and authorizes the board of directors of said association to do many things concerning the building and loan association and further permits them to vote for a shareholder at "any general, special or adjourned meeting of the shareholders."

50 Corpus Juris, p. 843, defines "proxy" as follows:

"An agency; the agency for another who acts through the agent; authority by one, having the right to do a certain thing, to another to do it; authority or power to do a certain thing; authority to act for another."

9 Corpus Juris, p. 936, in part provides as follows:

"Among other things, the rights of the stockholder include that of voting in person or by proxy at a legal meeting of the shareholders, * * * * *"

The laws relating to building and loan associations do not provide for the voting by proxy on matters similar to that sought to be accomplished by Mr. Henderson.

The Kansas City Court of Appeals in the Appeal of Powell and Doyle, 93 Mo. App. 296, l. c. 300, said:

"* * * The defendant is purely a creation of the statute, having only such powers as the statute gives and such as are necessarily implied."

In Bertche v. Loan and Investment Ass'n of Mo., 147 Mo. 343, l. c. 360, the Supreme Court of Missouri said:

"One who becomes a member of an association becomes chargeable with the knowledge of the provisions of its charter and by-laws and is bound by them. He can not be ignorant of them, nor can he refuse obedience to them unless indeed they are illegal or require the performance of acts which the law forbids. By-laws not illegal, and not requiring the performance of acts contrary to law, must therefore be deemed binding upon all persons who become members."

In State ex rel. v. Brown, 68 S. W. (2d) 55, l. c. 59, the Supreme Court of Missouri said:

"Measured by this standard the public policy of this state for more than forty years has been to place building and loan associations upon a different footing from that of corporations created under the general corporations laws of the state."

Section 5590, Laws of Missouri, 1931, page 147, in part provides:

"The shareholders of such corporation may make and adopt all necessary by-laws for the government of the affairs and business of the corporation, provided that the same shall not be inconsistent with the Constitution or laws of the state."

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From the above we conclude, that as the statutes relating to building and loan associations are silent concerning voting by proxy, then in order for proxies to be voted such must be provided for in the by-laws of the association. Consequently, not having the by-laws before us, we cannot determine if such provides that proxies may be used (voted), or in what form.

2.

The form of proxy attached to Mr. Henderson's letter permits of many things to be done by the board of directors concerning the assets of the association. For one thing-- the shareholders authorize and direct the board of directors to exercise their own judgment about the transfer or assignment of the assets of the association and if the directors seek to merge with another like and similar association, under and by virtue of Section 5611, Laws of Missouri, 1931, page 157, said merger would not be effective because that statute says,

"* * * 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, * * *"

The form of proxy further provides:

"* * *, or the reorganization of the Association into a Federal Savings and Loan Association, * * *."

And in order to accomplish that, the consent of two-thirds of the shareholders is necessary. See our opinion to you dated March 17, 1934.

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3.

In conclusion, as stated hereinbefore, we respectfully decline from rendering an opinion because we do not know what is provided for in the by-laws of said association relative to proxies.

If the association desires to merge with another like and similar corporation, then it must comply with Section 5611, supra. And if it desires to change from a State association to a Federal Savings and Loan Association, then it must comply with Section 5626, Laws of Missouri, 1931, page 162. It is thus seen that a further reason for declining to render an opinion is that if we approve the form of proxy as submitted, it might be implied by the board of directors that we have approved its manner and method in procuring the consent of its stockholders to do the things sought to be accomplished. We do not desire that directors and officers of an association shall rely, by implication, upon our opinion and place themselves in a position so that they will be amenable to Section 5610, Laws of Missouri, 1931, page 157.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JLH:EG