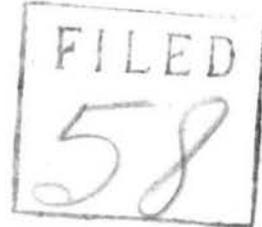


BUILDING & LOAN: By-law disapproved because it permits the loan of funds to members without the pledge of shares of stock.

2-19

February 17, 1936.



Hon. J. W. McCammon
Chief Clerk
Bureau of Building & Loan Supervision
Jefferson City, Missouri

Dear Mr. McCammon:

This is to acknowledge your letter dated February 14, 1936, as follows:

"We would like to have an opinion as to whether the following by-law, submitted to us for our approval, is legal:

"When there are more funds on hand at any regular or special meeting to meet the requirements of the borrowers, as provided in Sec. 8, then the Board of Directors, in their discretion, may loan such funds without the pledge of stock security, or with the pledge of a lesser number of shares than required in the above Section 8, such loans to be known as straight loans or split loans."

"Awaiting your early reply, I am"

Section 5594, Laws of Missouri, 1931, provides in part as follows (page 149):

"The moneys accumulated from payments on account of stock * * * * *

may, at times provided in the by-laws, be offered to such shareholders or shareholder who shall bid the highest premium for the preference or priority of right to have a loan or advance of a sum equal to the ultimate value of one or more of his or their respective shares; and such shareholders so bidding the highest premium as aforesaid shall be entitled to receive a loan or advance * * * * *

In case there shall be a balance of money remaining undisposed of at any stated meeting, the directors may, at their discretion, loan the funds so remaining on hand to others than stockholders on the security of prime unincumbered real estate or invest in obligations of the United States or of the state of Missouri and may dispose of such loans and investments at any time the said funds are needed for making loans to members, or for the other purposes of the association; Provided, that any such association may, by action of its board, dispense with the offering of its money for bids, and in lieu thereof loan or advance its money to members at such a rate of interest, or interest and premium, or interest and loan fee, as may be fixed from time to time, such premium as charged to be paid in gross or periodical installments."

A reading of the above section shows that funds of a building and loan association are intended to be loaned to the shareholders or members with the added provision that in the event a balance of moneys remains undisposed of that such may be loaned to other than stockholders. However, there must be a surplus of money on hand before it can be loaned to other than stockholders. If the funds are loaned to stockholders or members, then such must have shares of stock in the association.

Laws of Missouri, 1935, page 204, Section 5597, provides for the security for loans or advances made to members, and in part provides as follows:

"Provided, however, that the shares of the particular corporation without other security, may, in the discretion of the board of directors, be accepted as security for loans or advances, to an amount not exceeding nine-tenths of the withdrawal value of such shares at the time, as shown by the books of such association.

* * * * *

And provided further, than an association shall be permitted to make real estate loans to its members on a plan or plans requiring periodical direct reduction of the principal of the loan; and that any loan so made with which any number of shares of stock of the association is pledged shall be for all purposes a loan to a member, and that the proportion that the number or total amount in dollars of all such loans may bear to the number or total amount in dollars of all loans shall not impair or affect mutuality."

The by-law submitted for your approval is ambiguous. If the association has a balance of undisposed funds and desires to loan same to non-members, then the by-laws should so state. If the association desires to loan to members on real estate, then "said note or bond and mortgage or deed of trust shall recite and set forth the number of shares transferred and pledged by the particular shareholders so borrowing." Section 5597, supra.

You will note that the proposed by-law provides in part as follows:

"* * *the Board of Directors, in their discretion, may loan such funds without the pledge of stock security, * * *"

A loan to a member on real estate must be accompanied by a pledge of some stock; the amount of stock to be pledged being a question for determination by the association, in view of Section 5597, supra. As said proposed by-law would permit the loan of funds to members without the pledge of stock security, it would be violative of Section 5597, supra. Consequently, it should be disapproved.

If an association desires to loan funds to only its members, then some shares of stock must be pledged. However, if an association desires to loan to other than shareholders on prime encumbered real estate, then, of course, no shares of stock need to be pledged. The by-law proposed would, in our opinion, permit the association to loan its funds to persons other than shareholders and would also permit the loaning of funds to shareholders without the pledge of some stock security, and in view of the ambiguity of said by-law your approval should be withheld and the association notified that you were expressly disapproving said by-law, and request a clarification thereof.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JLH:EG