

BUILDING & LOAN: Consent of Supervisor necessary in order to mature stock; a plan of maturing certificates which exacts a contribution from shareholders is legal if no advantage or disadvantage is taken of other shareholders.

June 1, 1937

6-3

Honorable Joe C. Acuff
Chief Clerk
Bureau of Building & Loan
Supervision
Jefferson City, Missouri



Dear Mr. Acuff:

This is to acknowledge your letter as follows:

"We are in receipt of a request, by the Santa Fe Savings and Loan Association, Kansas City, Missouri, for our approval on the maturity of several shares of stock of that association. Their method of maturity as set forth in the request is to ask a contribution, by the shareholder, in the form of a lump sum in lieu of extended monthly payments. In this manner, they declare the stock matured at the par value as stated on the certificate issued at a date earlier than the earnings of the association justify.

"In other words, on the back of the certificates issued by this association, there was a schedule printed estimating maturity of this particular stock in 120 months. The 120 months period has now expired but the earnings of the association have not been sufficient, totaled with the dues

Honorable Joe C. Acuff

-2-

June 1, 1937.

paid in, to reach the par value of the certificate. Therefore, the association is requesting that the shares be matured at the book value but rather than show maturity at an amount less than the par value is asking for a contribution to make up the difference.

"In studying the law regarding maturities, I find that it does not specifically state that the maturity value must necessarily be the par value stated on the certificate. The question arises in my mind is whether it is possible to mature stock at book value rather than par value and if so, should it be declared matured at the book value rather than asking for an additional contribution in order to maintain maturity at the par value stated on the certificate.

"I have before me a method of maturing stock in such a manner as set forth by the Santa Fe Savings and Loan Association in a letter, which I am inclosing, to one of their shareholders.

"Inasmuch as both the association and the shareholder herein mentioned are anxious to receive an immediate reply we respectfully request that you let us have a written opinion at your earliest convenience.

"Please return the inclosures with your opinion so that we may restore them to our files."

Honorable Joe C. Acuff

-3-

June 1, 1937.

The inclosures appended to your letter show that the Santa Fe Savings and Loan Association is seeking to mature stock by exacting a contribution from each shareholder on each share of stock. In other words, the dues paid, plus the profits, will not mature the stock at its book or maturity value unless a contribution is exacted in order to bring the share of stock to its book value or its maturity value. The method of obtaining the contribution from the shareholders being that the certificate of stock is endorsed and forwarded to the Association, at which time a check is delivered to the shareholder for the amount of the contribution, signed by the Association. This check is then endorsed by the shareholder and returned to the Association. When this contribution check is received by the Association then a second check is forwarded to the shareholder, which will be the book value or stated maturity value of the stock, less the amount of the first check. The enclosure appended to your letter explains in detail the method as follows:

"The way we have to mature these is as follows: On or after April 10th you endorse your certificate on the back on the lower right hand line, and send it in to us. We then send you a check for \$110.00 which you will endorse and return to us. As soon as this is received we will send you the check for \$390.00 to complete the transaction."

The above procedure will mature \$500.00 worth of certificates.

A Building and Loan Association is a creature of statute, and is governed in its operation by the statutes and its by-laws. Bertche vs. Loan & Investment Association of Missouri, 147 Mo. 343.

Honorable Joe C. Acuff

-4-

June 1, 1937.

We do not know what the by-laws of the Santa Fe Savings and Loan Association provide relative to the maturity of shares by contribution from shareholders. Suffice it to say, however, that the by-laws would have to provide for maturity of certificates in the manner sought. The applicable statutory provisions relating to maturity of certificates is found in Section 5603, Laws of Missouri, 1931, (p.154). We quote the statute as follows:

"Each shareholder shall pay to said corporation at or before each stated meeting of the directors or at such time as may be provided in the by-laws as a contribution to the capital thereof the sum fixed as dues for each and every share held by him, until each share shall, under the provisions of this article, reach the ultimate value thereof: * * * and provided further, that when any shares of stock of an association have, in the opinion of the board of directors reached their ultimate value, such fact shall be reported to the supervisor of building and loan associations; and no stock shall be matured or money paid thereon except with the consent and approval of said supervisor of building and loan associations."

Nowhere in the statute is the word "maturity" defined. The only reference being that the by-laws fix the amount to be paid as dues by the shareholders until such shares reach the ultimate value.

"The term 'maturity' when used in connection with contracts generally is interpreted to refer to the time when its conditions and obligations are to be completely fulfilled. * * * Patterson vs. Reddish, 56 Cal. A.917, 201."

In *Bertche vs. Loan & Investment Association of Missouri*, the Supreme Court, en banc, in discussing the maturity or par of shares, said the following: (p.357)

"The law governing the formation of building and loan associations contemplates a scheme for paying the capital stock in installments, so long as such periodical payments, taken in connection with its other income arising from fines, dues, interest and profits, are necessary in order to bring the stock up to par."

Therefore for the purpose of Building and Loan Associations a share of stock will be deemed to have matured or to have reached its ultimate value when the dues paid in, plus profits, amounts to the stated par value. The Court has repeatedly held that an Association cannot fix a definite or arbitrary period in which to mature shares of stock for the reason that a Building and Loan Association is a mutual concern, and that the maturing of the shares of stock occurs when dues, plus profits, cause the stock to reach its ultimate stated value. In other words, an Association cannot guarantee that a share of stock will mature in so many months. *Bertche vs Loan & Investment Association of Missouri*, supra; *Fisher vs. Patton*, 134 Mo. 32.

The method of maturing a share of stock proposed by the Santa Fe Savings & Loan Association is not objectionable if such method does not deprive other shareholders of any substantial rights. In other words, if the proposed method inures to the advantage or disadvantage of other shareholders, then, of course, the maturing of the particular shares in the manner and method proposed would be ultra vires and void.

In *Fisher vs. Patton*, supra, the Supreme Court, en banc, had the following to say concerning fictitious credits in order to mature stock: (p.53)

"The action of defendants in an attempt to show a value of \$200 in cash on the books of the association for each share by a fictitious credit of \$42 thereon, which is assumed to be present because the average of premiums amount to that sum, can not be upheld as against plaintiff. The statement of July, 1894, shows that the shares were worth \$158 in cash and only by this fictitious credit could the amount of \$200 be reached. Such a calculation deprives plaintiff of a substantial right. It deprives him of his property and impairs the obligation of his contract."

In *Bertche vs Loan & Investment Association of Missouri*, supra, the Court said: (p.360)

"The association being organized under a mutual plan must treat all of its members equally, and any contract whereby one stockholder obtains greater share of profits than another would be violative of the principle of mutuality between the stockholders. The plainest principles of justice and honesty clearly forbid that one class of stockholders equally meritorious should be compelled to suffer that others may profit thereby."

From the above and foregoing it is our opinion that as the consent and approval of the Supervisor of Building & Loan Associations is necessary in order for stock to be matured or money paid thereon that if the

Honorable Joe C. Acuff

-7-

June 1, 1937.

plan of maturity proposed does not deprive any other shareholder of any substantial right, then the Supervisor would be within his rights to approve the maturity of shares of stock as proposed by the Santa Fe Savings & Loan Association. However, before the Supervisor can approve such a plan, the plan of maturity must be provided in the by-laws so that other shareholders' certificates will be matured in like manner.

We are returning the inclosures.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

JLH/R