

BUILDING & LOAN: Supervisor may not give a copy of annual examination of building and loan associations to anyone other than the Governor.

April 29, 1937.

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Honorable J. W. McCammon
Supervisor
Bureau of Building & Loan Supervision
Jefferson City, Missouri

Dear Mr. McCammon:

This is to acknowledge your letter dated April 28, 1937, as follows:

"The inclosed copy of a letter I have received from Hon. R. J. Richardson, president of the Federal Home Loan Bank of Des Moines, is self-explanatory.

"Will you please let me have a letter advising whether, under the Missouri law, I am permitted to furnish the confidential information that is contained in reports made to us by our examiners.

"You will note that Mr. Richardson's request covers state chartered associations that are members of the Bank other than insured associations."

The copy of Mr. Richardson's letter, dated April 1, 1937, reads in part as follows:

"When your Department examines a member of the Bank in Missouri, other than insured associations, will you please have an extra copy made of the examination report and forward it to the Bank?

"We need information contained in such reports for statistical purposes and, of course, such information is only for the Bank's use."

By virtue of Section 5607, Laws of Missouri, 1933, page 180-181, building and loan associations may become members of the Federal Home Loan Bank and comply with the provisions of the Act of Congress known and cited as "The Federal Home Loan Bank Act." A building and loan association is not compelled to become a member of the Federal Home Loan Bank. However, if such wishes, and provides therefor in its by-laws, it becomes a member upon the approval of the Supervisor. The purpose for which an association would become a member of the Bank would be in order to borrow money. Said section provides in part as follows:

"If the board of directors of an association declare that an emergency exists in the affairs of the association and make application to the supervisor to borrow an amount in excess of the above limitation, the supervisor if in his opinion it is for the best interests of the association so to do, may authorize in writing the association to borrow such amount and amounts as he deems advisable.

Any such association shall have the power to pledge, assign and transfer in trust or otherwise as the board of directors thereof may determine, its borrowers' notes, bonds, mortgages or other assets of the association, and to repledge the shares of stock of its borrowers pledged to it as collateral security, as security for money borrowed from or advances made by said Federal Home Loan Bank, and the supervisor of Building and Loan Associations shall make any and all reasonable rules and regulations not inconsistent herewith to accomplish the purpose of this Act. "

You will note that Section 5607, supra, does not permit of any examination by the Bank. The association merely borrows money from the Bank and pledges collateral for the repayment thereof. Before an association may borrow money it

must so provide in its by-laws and obtain the consent of the supervisor, in writing.

Mr. Richardson wishes a copy of the bureau's examination made of the associations that are members of the Bank for statistical and other purposes, and in view of the cooperation between Federal agencies and the Missouri Bureau we would unhesitatingly rule that you could give the Bank a copy of the examination if it were not for the provisions of the Missouri statutes, which will hereinafter be quoted and discussed.

Section 5624, Laws of Missouri, 1931, page 161, makes it the duty of the supervisor, or by some person or persons appointed by him "to make a full and careful examination of the affairs of any and all associations in the state as often as, in the discretion of the supervisor, the condition of any association may require and the funds of the bureau may permit." Said section further provides:

"In every such examination, inquiry shall be made as to the nature and resources of the corporation generally, the mode of conducting and managing its affairs, the action of its directors, the investment of its funds, the security offered its members and those by whom its engagements are held, and whether the requirements of its charter and the law have been complied with in the administration of its affairs. The supervisor shall, as soon as practicable, after such examination, forward a report of the result of such examination, together with such suggestions as to him may seem proper, to the president of such association."

You will note from a reading of Section 5624, supra, that the examination required goes into every phase of the association's business, its management, action of the directors, the security given by members, etc. In other words, it is an examination of far-reaching importance and no doubt would entail matters that would be other than for statistical purposes. The

supervisor, when the examination is completed, forwards a copy to no one other than the president of such association.

Section 5581, Laws of Missouri, 1931, page 143, requires examiners and other employes to take an oath and enter into a bond before discharging any of their duties. The condition of the bond is that they will fairly and impartially discharge their duties. Note these mandatory provisions of said section:

"The supervisor of building and loan associations, assistants, and examiners, and the other employes shall each, before entering upon the discharge of his or her duties, take and subscribe the oath of office containing the usual provisions, and, in addition, that he or she will not reveal the condition of affairs of any building and loan association, or any facts that may pertain to the same, that may come to his or her knowledge by virtue of his or her official position, unless required by law so to do in the discharge of the duties of his or her said office or as a witness in a criminal prosecution, and said supervisor of building and loan associations, assistants, and examiners shall further execute to the State of Missouri good and sufficient bonds to be approved by the governor and attorney-general, conditioned that they will fairly and impartially discharge the duties of their offices."

Section 5584, Laws of Missouri, 1931, page 144, reads as follows:

"The supervisor of building and loan associations shall preserve all records, reports, and papers pertaining to the bureau of building and loan supervision and shall make a report in writing to the governor on or before the first day of December of each year, which report shall

set out in detail the condition and work of the bureau during the year preceding and he shall make such further reports at any time that shall be required by the governor."

Nowhere in the statutes do we find where the supervisor may give a copy of the examination to anyone other than to make a report to the Governor, if required by him. Section 5581, supra, specifically prohibits the revealing of the condition of affairs of any association. Said section is mandatory to the extent that if conditions of an association are revealed that perhaps a suit on the official bond of the examiners of the supervisor could be maintained.

It is our opinion that, owing to the provisions of the statutes relating to building and loan supervision, you may not give a copy of the examination to the Federal Home Loan Bank or to any other person, except if required to do so by the Governor or if required to do so by law.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

JLH:EG