

BUILDING AND LOAN: If by-laws provide, free shares of stock may be accepted for real estate only.

June 14, 1937. 6-16

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



Dear Mr. McCammon:

This is to acknowledge your letter dated June 9, 1937, as follows:

"You are familiar, of course, with Dr. Skinner's effort to withdraw his investment from the Gateway Savings and Loan Association, Kansas City, a subject we have discussed verbally several times. And, as I understand it, it is clearly legal for me to approve a proposition for Dr. Skinner to accept real estate owned of the Gateway Association in payment of the money he unsuccessfully invested, provided Dr. Skinner and officers of the Gateway can agree as to price of the real estate and also provided Dr. Skinner is willing to accept real estate.

"As you already know, I have made several efforts to contact Dr. Skinner for the purpose of laying this tentative proposition before him, but on each occasion he has been out of his office or too busy with his patients to be interrupted.

"I am now asking you to let me have a letter formally approving from a legal standpoint, the proposed exchange of

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"real estate for the building and loan shares Dr. Skinner holds, it being impossible, under the Missouri law, for him to withdraw these shares in cash from the association."

A building and loan association is a quasi public financial institution, and is supervised by the State through the Bureau of Building and Loan Supervision. State ex rel. v. Farm and Home Savings and Loan Association of Missouri, 90 S. W. (2d) 93. A building and loan association may only operate as is provided by its by-laws and the statutes. While the supervisor is given full, adequate and complete authority to inquire into the method and management of associations, yet the duty does not rest upon him to insure each shareholder against bad investments. In other words, the supervisor does not have the duty placed upon him to guarantee to all shareholders that investments made in building and loan associations will be secure. No doubt Dr. Skinner made an investment into an association, which it turns out is a bad one. Section 5604, Laws of Missouri, 1931, page 155, provides how a shareholder may withdraw, and limits the association as to the amount that can be paid to withdrawing shareholders. Note this provision which restricts building and loan associations:

"* * * * and when the demands of withdrawing shareholders exceed the moneys applicable to their payment, the funds applicable to the payment of the withdrawing shareholders shall be pro-rated among the members who have filed notice of withdrawal upon the following basis:"

We assume that there are many withdrawing shareholders in the Gateway Savings and Loan Association of Kansas City, and, therefore, it will be some time before Dr. Skinner can receive his money. You suggest a possible way in which a quick realization of the withdrawal value of Dr. Skinner's shares can be consummated, i.e. accepting real estate owned in lieu of the book value of his certificates.

Section 5600, Laws of Missouri, 1931, page 153, reads as follows:

"Any corporation created by or under this article is hereby authorized and empowered to purchase at any sheriff's sale or at any other sale, public or private, judicial or otherwise, any real estate upon which such corporation may have or hold any mortgage, deed of trust, judgment, lien or other encumbrance, or in which such corporation may have an interest, and to sell, convey, lease or mortgage, at pleasure the real estate so purchased to any person or persons whatsoever."

You will note the above section permits an association to sell, convey, lease or mortgage, at pleasure, real estate owned or purchased to any person or persons whatsoever. The Legislature sanctions the exchange of certificates of stock for real estate owned, because by virtue of Section 5593, Laws of Missouri, 1935, page 201, it provided for the segregation of good assets and bad assets into a participating reserve fund, and specifically provided for the exchange of stock for real estate owned. We quote the pertinent provision, as follows:

"* * * * And any building and loan association may in the sale of its real estate take stock in the association in payment of the purchase price or any part thereof, at such price and upon such terms and conditions as the board of directors by resolution may approve."

From the above and foregoing it is our opinion that if the by-laws of the Gateway Savings and Loan Association so provide, then the association may accept shares of stock owned

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by Dr. Skinner in exchange for real estate owned. However, the accepting by the association of certificates of stock in exchange for real estate only applies as to free shares. An association is not permitted to accept shares in payment of any loan that might be held by the association. As to the latter, we have written you previously an opinion in which it was held that shares of stock could not be used as a setoff or in payment of an indebtedness.

Yours very truly,

James L. HornBostel
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

JLH/R