

SUPERVISOR OF BUILDING AND LOAN ASSOCIATIONS:

- (1). A person appointed by the Governor to fill vacancy in office of Supervisor of Building and Loan Associations has authority to discharge the duties of Supervisor prior to confirmation by the Senate.
- (2). Removal of supervisor disqualifies him to act as Receiver. Supervisor appointed to fill vacancy should proceed to have himself appointed receiver in all cases pending in court and court should appoint him as such receiver.

February 20, 1937

Honorable Lloyd C. Stark
Governor of Missouri
Jefferson City, Missouri



Dear Governor Stark:

This will acknowledge receipt of your letter of recent date requesting an opinion from this Department, which reads as follows:

"I have this day removed Ira A. McBride as Supervisor of the Bureau of the Building & Loan Supervision and have appointed J. W. McCammon to take charge of the affairs of the Bureau as Supervisor.

"Mr. McBride, is, by virtue of his position as Supervisor of the Bureau of Building & Loan Supervision, Receiver in a number of cases involving Building & Loan Associations in Jackson County, Missouri. These cases are pending in the Circuit Court of Jackson County and it is my understanding that all of them are in Judge Albert Ridge's Division, with the possible exception of one case in Judge Ray Cowan's Division. I will appreciate your giving me an opinion covering the following points:

- "1. Does the removal of Mr. McBride as Supervisor automatically constitute a disqualification of him

to act as Receiver in these cases?

- "2. Does the appointment of Mr. McCammon as Supervisor, prior to confirmation by the Senate, authorize him to act and discharge the duties as Supervisor of the Bureau of Building & Loan Supervision?
- "3. Can the Judge before whom these receivership matters are pending refuse to appoint Mr. McCammon in his capacity as Supervisor, as Receiver in the cases in which McBride is now acting as Receiver?"

We will answer your second question first.

Under the provisions of Section 5577, Revised Statutes of Missouri 1929; the Supervisor of Building and Loan Associations holds his office at the pleasure of the Governor. Said section reads as follows:

"The supervisor of building and loan associations shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold his office at the pleasure of the governor."

Section 361, Chapter 15, Throop's Public Officers, provides, in part:

"The law, relating to the power to remove without cause, has already been incidentally considered in discussing the question, who has the power of removal. The

general rule is thus stated, in a case decided by the Supreme Court of Pennsylvania: 'Where an appointment is during pleasure, or the power of removal is entirely discretionary, there the will of the appointing or removing power is without control, and no reason can be asked for, nor is it necessary that any cause should be assigned.' "

In view of the above, there can be no doubt of the Governor's authority to remove the Supervisor of Building and Loan Associations at any time. Having done so a vacancy exists in the office of Supervisor of Building and Loan Associations.

Section 327, Chapter 15, Throop's Public Officers, states the law as follows:

"An officer holds over, only where he has served to the end of his term, not where he has been adjudged to have forfeited his office; for such a judgment produces an immediate vacancy. So it has been held, that an officer, who has resigned or has been removed, does not hold over, for the same reason, namely, that the office becomes vacant by the resignation or removal."

Under the provisions of Section 5577, supra, the Supervisor of Building and Loan Associations is appointed by the Governor, by and with the advice and consent of the Senate. As we have stated above, however, a vacancy has been created in the office of Supervisor of Building and Loan Associations by reason of the discharge of Ira A. McBride. It is a fundamental principle that the law abhors vacancy in public

office and great precautions are taken to guard against their occurrence.

Section 11 of Article V of the Constitution of Missouri provides as follows:

"When any office shall become vacant, the Governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed and qualified according to law."

It is plain from the above that the Governor has the constitutional authority, unless it is otherwise provided by law, to appoint a person to fill a vacancy in any office and that such person continues in office until a successor shall have been duly elected or appointed and qualified. We find no other provision for the appointment of a person to fill a vacancy in the office of Supervisor of Building and Loan Associations.

It is, therefore, the opinion of this Department that the Governor has authority to appoint a person to fill a vacancy in the office of Supervisor of Building and Loan Associations created by his removal of the Supervisor, and that such person appointed to fill the vacancy has the power to carry out all the duties of such office until his successor is appointed and qualified according to law; that is, until the office is filled by a person appointed by the Governor, by and with the advice and consent of the Senate, who has duly subscribed to the oath and given the bond required by law.

Your questions numbered one and three being related, we will treat them together.

Section 5627, Laws of Missouri 1931, pages 163, 164, 165, provides, in part, that

"The supervisor may at any time after he takes charge of the assets and the affairs of an association, institute proceedings in the circuit court in the city or county in which said association has its principal office, and have himself appointed temporary receiver, until it is determined whether or not such association can resume business; or appointed receiver for the purpose of winding up its affairs, and the court shall upon such application, appoint the supervisor such receiver; * * * "

Section 5628, Laws of Missouri 1931, page 165, provides that such proceedings shall be conducted by the Attorney General of the State, in the name of the State of Missouri as plaintiff, at the relation of said Supervisor.

The above sections, together with other sections found in Chapter 35, Laws of Missouri 1931, pages 141 to 165, provide a complete scheme for liquidating and winding up the affairs of building and loan associations.

It is plain from a reading of Section 5627, supra, that the supervisor is appointed by the court as receiver, by virtue of the fact that he is supervisor.

Section 295 of the Second Edition of Thompson on Building Associations, provides, in part:

"When the legislature provides a complete scheme for winding up an association through some executive officer and the attorney-general, it may become a question whether or not the remedy as provided is an exclusive one. The supreme court of Indiana has held

that when the legislature provided that the auditor of the state should enforce any liability for loss occasioned by the misconduct of trustees of a savings bank, the remedy thus provided was exclusive of all others. The principles governing that case would seem to control the application for a receiver when the statute determines the method of winding up insolvent associations. The policy of the law would seem to be the placing of these institutions under the surveillance of an executive officer of the state for all purposes. To hold otherwise would expose the association to attacks from every disgruntled shareholder - a position that might weaken it in public confidence and be very expensive to it in defending against assaults. * * * * "

See also Section 1226, page 1372, Braver on Liquidation of Financial Institutions.

The supervisor having been appointed receiver, under the statute, by reason of the fact that he was Supervisor of Building and Loan Associations, it would necessarily follow, we think, that upon his discharge as supervisor he would no longer have authority to act as receiver.

As pointed out above, the supervisor appointed to fill the vacancy created by the removal of Ira A. McBride has the authority and it is his duty to carry out the duties imposed upon the supervisor by law. A part of these duties is to have himself appointed receiver by the court when the affairs of a building and loan association have been taken over by the

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supervisor, and it is also made the duty of the court to appoint the supervisor such receiver.

It is, therefore, the opinion of this Department that the removal of Ira A. McBride as Supervisor of Building and Loan Associations, disqualifies him to act as receiver in cases now pending in court in which he has been appointed receiver by virtue of the fact that he was Supervisor of Building and Loan Associations.

It is our further opinion that it is the duty of Mr. McCammon, who has succeeded Mr. McBride as Supervisor, to institute proceedings in the circuit court in which such receiverships are now pending to have himself, as supervisor, substituted as receiver in place of Mr. McBride, and, it is our further opinion that the Circuit Judge before whom said cases are pending should, upon proper application, remove Ira A. McBride as receiver and substitute the new supervisor in his place.

Respectfully submitted,

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J. E. TAYLOR
(Acting) Attorney General

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