

BUILDING AND LOAN:

Directors may contract with
association; when.

January 26, 1939



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

Dear Mr. McCammon:

This department is in receipt of your request for an official opinion to which you attach the following letter:

"Poplar Bluff Loan and Building Association, as you may know, owns a number of pieces of property. It is necessary from time to time to make repairs on these properties, and we also keep them insured.

"We have on our board of directors insurance agents, plumbers and material men. These members write insurance and furnish material and labor on and for these properties. This, as I understand, has been a custom for many years.

"Outside insurance agents, plumbers and material men severely criticize the association for this practice, and claim that the directors have monopolized the business. This criticism is detrimental to the best interest of the association.

"As I understand the law, the directors of this institution are trustees in charge of and administering the business of the association for the benefit of the share-

holders and cannot legally deal with the trust estate, or the property thereof, for profit or gain.

"I would like very much to have the benefit of your opinion in this matter, and also the opinion of the Attorney General as to the legality of the practice.

"I do not want to be understood as intimating that any director has been guilty of any unfair practice in his dealing with the association. Our directorate is made up of some of our best citizens, men of the utmost integrity, and if the practice is improper, they are not subject to criticism for they are laymen and are merely following a long established practice, or custom."

It is the rule as stated in 9 Am. Jur. 122, that:

"The powers and duties of officers of Building and Loan Associations are those which usually appertain to the officers of corporations generally."

The general rule is given in 14A Corpus Juris 118, citing Missouri cases that:

"A director may deal or contract with a corporation where he acts in good faith and the corporation is represented by a quorum of disinterested directors or other independent officers or agents authorized to contract for it. Such a contract is not void per se nor is it voidable."

This view is taken in Frankford Exchange Bank v. McCune, 72 S. W. (2d) 155, in which the court said:

"This case, in our view of it, as well as in the view which the lower court seems to have entertained, is to be largely determined by the general rules of law which have to do with the relationship which exists between a corporation and its officers. Such relationship is one of trust and confidence, the natural consequence of which is that the officers have no right to use their official positions for the benefit of anyone except the corporation itself. For such reason they have no right or authority to represent the corporation in any transaction in which they are personally interested in obtaining an advantage at the expense of the corporation, such a dual status or assertion of adverse interest being wholly inconsistent with the obligation of the fiduciary relationship which they bear to the corporation. This does not mean that an individual officer or director of a corporation may not deal with it, provided he deals openly with other agents of the corporation who are themselves disinterested and who have full power to act in the premises, since in such an instance he represents only himself and not the corporation, and the interests of the latter are cared for and protected by officers and agents who themselves have no adverse interests at stake in the matter. It necessarily follows, however, that corporate officers and directors cannot deal with themselves and for the corporation at the same time, and that contracts and dealings between the corporation and its officers are invalid when they run counter to the trust relationship which must at all times exist."

CONCLUSION

It is, therefore, the opinion of this department that directors of a Building and Loan Association may con-

Hon. J. W. McCammon

- 4 -

January 26, 1939

tract and deal with the Association provided they deal openly with other agents or directors of the Association who are themselves wholly disinterested and there is no fraud or collusion in arriving at the contract or deal.

Respectfully submitted

ARTHUR O'KEEFE
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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