

BUILDING AND LOAN: Only borrower with no shares
pledged entitled to cast vote.

September 25, 1940

9-28

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

FILED
58

Dear Sir:

This department is in receipt of your request
for an official opinion, which reads as follows:

"The 1939 Missouri General Assembly
revised Section 5597, Missouri
Statutes, and said section now reads,
in part, as follows:

"And provided further, that an associ-
ation shall be permitted to make real
estate loans without requiring a borrow-
er to own or pledge shares in connection
therewith, on a plan or plans requiring
periodical direct reduction of the
principal of the loan, and each such
borrower from an association shall be
constituted a member thereof during the
life of the loan, and in the determina-
tion of all questions requiring action
by the members, shall be permitted, as
a borrower, to cast one vote in addition
to the number of votes that he may be
entitled to cast on account of any shares
of stock that he may hold; and it is
further provided that the proportion that
the number or total amount in dollars of
all such loans may bear to the number or
total amount in dollars of all loans
shall not impair or affect mutuality."

"The question arises, does each borrower, having obtained a real estate loan from the association, have a vote by virtue of being a borrower alone or is that vote given only to a borrower who obtains a real estate loan (from the association) when such loan is as described in the statute, a loan 'on a plan or plans requiring periodical direct reduction of the principal of the loan?'

"The question is of considerable importance because a great number of state chartered associations either still make the serial plan loans, described at the beginning of Section 5597, or still have that type of loan on their records.

"I will appreciate the benefit of your opinion on the above question."

Our Supreme Court in passing upon the statutes relating to building and loan associations has held that they "are quasi public financial institutions and for the protection of them the State of Missouri has, by the Act of 1931, provided special inquisitorial supervisory and regulating laws which are specific, adequate and complete, and, therefore, exclusive." State ex rel. Wagner v. Farm and Home Savings and Loan Assn., 90 S. W. (2d) 93.

This statement is in accord with the general rule as stated in 12 C. J. S. 400, which provides:

"Today these associations are so extensively created and regulated by legislation that they have virtually become creatures of statute which must obey the statutory mandates and make effective

the public policy of the state evidenced thereby. Where this legislation is specific, adequate, and complete it becomes exclusive on the subject."

We believe the statute is plain in its provision that any person who borrows money from a building and loan association without owning or pledging shares in connection therewith, said loan to be paid by periodical reduction payments, is a member of the association and is entitled to cast one vote. The purpose of this proviso is to allow building and loan associations to make real estate loans without the pledging of shares of stock.

This right has been recognized in other jurisdictions, as in *Rummers v. Home Savings and Loan Assn.*, 182 Wash. 539, 47 Pac. (2d) 845.

We believe, from a reading of the statute that this vote is given only to a person who obtains a real estate loan without pledging shares.

CONCLUSION.

It is, therefore, the opinion of this department, that Section 5597, Laws of Missouri 1939, page 257, entitles only a borrower who has a real estate loan from a building and loan association without a pledge of stock, to cast one vote, in addition to the number of votes he may be entitled to cast on account of any shares of stock that he may hold, and this right does not inure to a borrower who has pledged stock with the association for his real estate loan.

Respectfully submitted,

ARTHUR O'KEEFE
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

A'OK:CP