

BUILDING AND LOAN: Building and Loan Supervisor may under certain conditions request court to escheat certain funds to the State of Missouri.

June 1, 1943

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Mr. T. Victor Jeffries  
Supervisor  
Bureau of Building and Loan Supervision  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, under date of May 25, 1943, which reads:

"In the days of depression many building and loan associations segregated their assets which resulted in the good assets being sold into a good institution and the bad assets being listed as "B" Accounts and put in charge of trustees to liquidate.

"Now it has developed that most of these "B" Accounts have been converted to cash and are now to the closing stages of liquidation. Final distribution to the shareholders is now in order. Many of the shareholders have unknown addresses and also, because of the fact that their accounts are so small, their certificates will never be turned in for cancellation and receive their proportional part.

"These trustees are usually well compensated for their services and in most instances have an attorney as their adviser, who receives ample compensation for his services and naturally, they do not encourage a fast method of liquidation because it would take away some of their means of making a living.

"I can't see why there should be any delay at all after the assets have been turned to cash in making an immediate liquidation. I think the following suggestions I have made are legal and wish an opinion from your department as to the legality and also an idea of the expense that your office would incur in going into Court for a court order for the deposit of the unclaimed balances into the Escheat fund.

"It has been my suggestion that the trustees pass a resolution turning the assets of the trust over to the State Department for liquidation. When that is done, I will employ some person to make distribution, that is, put out letters asking for the return of their certificates so that checks might be sent out for final payment. After a reasonable time then, have your office file a petition in Court, asking for a court order that all money left, be turned over to the Escheat fund of the State.

"At a glance you can see what a savings this would mean to the shareholders and no doubt, they would be more pleased to have their final liquidation carried out by a State Department assisted by your office, than they would be by persons who are more or less interested in handling the trust for what they can get out of it.

"We are going to have several of these, so your immediate attention to the above, will be greatly appreciated."

You refer to certain bad assets listed as "B" Accounts and put in charge of trustees to liquidate, the balance of good assets having heretofore been sold. We are assuming, for the purpose of this opinion, that such refers to a voluntary liquidation wherein no court proceedings have been instituted; that such trustees are appointed by the Board of Directors of the respective building and loan companies under and by virtue of authority vested in them under Section 8210, R. S. Missouri 1939, and their respective by-laws. Section 8210, supra, reads in part:

"\* \* \* \* \* And any building and loan association shall have the power to provide in its by-laws for the creation and establishment from time to time of a 'participating reserve fund', in which may be placed any or all real estate owned by the association and any loans and/or other assets of doubtful value, the same to be selected by the board of directors, the book value of the assets in said reserve fund to be apportioned pro rata in reduction of the book value of the stock of the association then outstanding, subject to the approval of the supervisor of building and loan associations. Such reserve fund shall be and remain a separate fund from the other assets of the association to be liquidated and shall be represented by a class of stock to be known as 'participating reserve shares', of the association to be issued to those stockholders of the association pro rata, the book value of whose stock has been reduced by the creation of such reserve fund. In the liquidation of said reserve fund all the proceeds from the sale of said real estate or collection or liquidation of said loans or other assets shall be paid to the holders of said participating reserve shares, at such times as the board of directors shall determine. All losses, if any, that may occur in said reserve fund shall be absorbed by the holders of said participating reserve shares. The association, if so provided by by-law, may transfer and/or convey title to the assets in said reserve fund, or any part thereof to three trustees selected by the board of directors, who may be officers of the association, under a trust agreement defining the powers and duties of the trustees, who may issue 'participating reserve certificates', instead of 'participating reserve shares', to said stockholders entitled thereto, as provided above, giving all the rights and subject to all the liabilities herein provided as to 'participating reserve shares'. And upon the surrender to the association of the outstanding stock in the hands of a member of such association there shall be issued to such member new stock certificates of the association evidencing the reduced value of the stock surrendered, and in addition to such new stock certificates the reserve shares or reserve certificates to

which such member is entitled, as above provided. Such reserve shares or reserve certificates issued to a borrowing member who had his stock up as collateral for a loan shall be pledged as additional collateral for such loan, and the borrowing member shall continue to make installment payments on his loan, as provided in the note or bond and deed of trust securing said loan, and upon payment of the loan in full the directors may apply as a credit on the loan the then value of the reserve shares as determined by the board of directors, after taking into consideration any estimated losses sustained in such reserve fund. In making reports and statements to the supervisory department of the state, the value of such a reserve fund undistributed shall be included as a part of the assets of the association and be classified as 'participating reserve fund': \* \* \* \* \*

The facts in the instant case apparently leave nothing further for these building and loan associations to liquidate except to see that a proper disposition is made of the money received from the sale of class "B" Accounts. You suggest that the Board of Directors of these loan companies now adopt a resolution to turn over to you as Supervisor of the Bureau of Building Loan Supervision the money now being held by them from sale of "B" Accounts for distribution to proper parties and if you are unable to locate persons entitled to receive said money, or such persons refuse or fail to turn in their certificates for cancellation within a reasonable time, then you suggest this Department shall file a petition in circuit court asking that the court order all such money unclaimed be turned over to the escheats fund of the State of Missouri.

This Department, under date of October 31, 1941, rendered an opinion to the Honorable Wilson Bell, Treasurer of the State of Missouri, wherein it was held that a voluntary dissolution of a corporation in this State did not constitute proceedings in or before the courts in this State and therefore Section 620, R. S. Missouri 1939, of the escheats statutes did not apply, that Section 620, supra, contemplated only proceedings in a court. It has been held that a building and loan association, while peculiar in its features is, nevertheless, a business corporation. (See Woerheide v. Johnston, 81 Mo. App. 193.) The facts herein likewise do not contemplate any court procedure to date. The appointment

of the present trustees was by the Board of Directors and not by a court. Therefore, such escheat provisions which are strictly statutory are not applicable in the instant case. However, as held in the opinion above mentioned, even though Section 620, supra, was not broad enough to cover such funds, which funds may still escheat to the State under the Constitution of Missouri as unclaimed dividends. In view of the opinion hereinabove referred to dealing with this same matter, it would be mere repetition for the writer to include the reasons and law in support of the proposition that such funds do not come within the purview of Section 620, supra, relative to funds being placed into the escheat fund of the State of Missouri, but that said funds do escheat under the Constitution, namely, Section 6, Article XI, declaring that unclaimed dividends shall be paid into the State Treasury, and securely invested and sacredly preserved as a public school fund. Therefore, we refer you to the foregoing opinion, which we consider applicable in this instance, and a copy of which we are attaching hereto.

Section 8248, R. S. Missouri 1939, specifically authorizes the Supervisor of the Bureau of Building and Loan Supervision to assume control under certain conditions and it is the opinion of this Department that under such circumstances as stated in your request, the Directors of such building and loan associations may direct you as Supervisor of the Bureau of Building and Loan Supervision in this State to take over and manage the affairs of said building and loan associations. Section 8248, supra, reads in part:

"No association shall cease to do business or attempt to make a voluntary assignment of its assets or in any other manner to liquidate its affairs prior to the maturity of all its stock, except with the consent of two-thirds of its stockholders and the approval of the supervisor of building and loan associations as hereinafter provided. If any association attempts to make such an assignment, the supervisor shall upon his own initiative take charge of the association and of its assets and shall manage and conduct its business. Or if it shall appear to the supervisor from any report of such association or from any examination made or caused to be made by him, or from any knowledge or information obtained from any other source, that such association has committed a violation of its charter or is acting unlawfully, or that such association is conducting its busi-

ness in an unsafe or unauthorized manner, or that the assets of any such association are insufficient to justify the continuance of business by such association, or it shall appear to the supervisor that it is unsafe or inexpedient for any such association to continue to transact business, the supervisor shall communicate the fact to the officers or directors; such officers or directors shall be allowed sixty days in which to make the assets sufficient or to correct the illegal practices. In case such assets are not made sufficient, or the illegal practices corrected within a time fixed by the supervisor, or if the directors request the supervisor so to do, the supervisor shall take charge of the association and its assets and manage and conduct its business. \* \* \* \* \*

There is only one reason why such procedure, before being executed, should be carefully considered and that is, that the statutory provisions, Sections 623 and 624, R. S. Missouri 1939, permitting the rightful owners to apply for said money within twenty-one years thereafter and receive same, does not apply in the case of this escheat under the Constitution. However, we think the General Assembly would not turn a deaf ear and would reimburse any claimant who, within a reasonable time after said fund escheats to the State, files his claim with the General Assembly.

Under Section 8250, R. S. Missouri 1939, it becomes the duty of the Attorney General to conduct such litigation. The costs of such litigation would be nominal. The only costs to this Department would be actual travelling expenses.

Therefore, it is the opinion of this Department that the Directors of such building and loan association may pass a resolution requesting the Supervisor of the Bureau of Building and Loan Supervision in this State to take charge of said associations, transferring said funds to him, and that he make every effort to distribute said funds to their rightful and legal owners and after every effort to do this has failed and they cannot be located within a reasonable time thereafter, he may go into court and request the

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court to order said fund to be paid into the State Treasury to the credit of the school fund, in conformity with Section 6, Article XI, of the Constitution of the State of Missouri.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

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