

BUILDING AND LOAN: Notice for annual or semiannual meetings.

NOTICE:



June 27, 1945

Mr. F. M. Horton, Supervisor
Bureau of Building and Loan Supervision
State of Missouri
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter of June 12, requesting an official opinion from this department, which reads:

"Considerable confusion and uncertainty exist among building and loan associations of Missouri as to the proper method of publishing notices of their annual meetings. Will you please furnish this office with an opinion as to what notice should be given of annual or special meetings of the shareholders of building and loan associations, and how such notice should be published."

Section 8202, R. S. Mo. 1939, which is a part of the Act pertaining to building and loan associations, concludes as follows:

" * * * * shall become a corporation on complying with the provisions of this article, and shall remain a corporation, with all the powers and privileges, and subject to all the duties, limitations and restrictions, conferred by general laws upon corporations, except as herein-after otherwise provided."

Section 8207, R. S. Mo. 1939, provides that the bylaws of building and loan associations must be approved by share-

holders and the same shall not be inconsistent with the Constitution or laws of the state. Furthermore, such bylaws must be approved by the supervisor of building and loan associations. Said section reads in part as follows:

"The shareholders of such corporation may make and adopt all necessary by-laws for the government of the affairs and business of the corporation, provided that the same shall not be inconsistent with the Constitution or laws of the state. A copy of such by-laws shall be filed with the supervisor of building and loan associations, and such by-laws, and any amendments thereto or changes therein, shall not be in force and effect, and no action shall be taken thereunder until the same are approved by the supervisor of building and loan associations as being practically and financially sound and in the best interest of the shareholders: * * * * *"

Section 8208, R. S. Mo. 1939, specifically provides that the time of each periodical meeting of officers and shareholders of building and loan associations shall be provided for in the bylaws. Said section provides as follows:

"The number, title and functions of the officers of any corporation created by virtue of this or any previous law, their terms of office, the time of their election, as well as the qualification of electors, and the time of each periodical meeting of the officers and shareholders of such corporation, shall be provided for in the by-laws. * * * * *"

Section 8212, R. S. Mo. 1939, at least indicated that building and loan associations should provide in their bylaws for the giving of notice for the holding of annual meetings, however this section was repealed by the 62nd General Assembly, Laws of 1933, page 335.

Chapter 40, R. S. Mo. 1939, pertains to the creation and administration of the bureau of building and loan supervision

and building and loan associations. In said chapter there are statutory provisions requiring notices for various purposes, however we are unable to find where there is any provision specifying any particular kind of a notice shall be given for an annual or semiannual meeting, other than as herein above stated in Section 8208, supra.

In view of Section 8202, supra, providing that building and loan associations shall be subject to all the duties, limitations and restrictions conferred by general laws upon corporations, except as hereinafter otherwise provided, will require an examination of the Corporation Laws of the State of Missouri to determine if there is any provision applicable to building and loan associations. The Corporation Laws of the State of Missouri, for most purposes, was repealed by the 62nd General Assembly, and a new law enacted (Laws 1943, pages 410 to 491). Section 3 of said Act provides that corporations for profit, except building and loan associations and other corporations enumerated therein, may be organized under the Act for any lawful purpose or purposes. Said section reads:

"Corporations for profit except banking, insurance, railroad corporations, building and loan associations, saving banks and safe deposit companies, credit unions, mortgage loan companies, union stations, trust companies, and exposition companies may be organized under this Act for any lawful purpose or purposes."

Section 171 of the same Act, subsection (b), further provides that no provision of said Act, other than those mentioned in subsection (a), shall be applicable to building and loan associations and other enumerated corporations, and in no manner refers to notices. Section 171, subsections (a) and (b), read:

"The provisions of this Act shall be applicable to existing corporations as follows:

"(a) Those provisions of this Act requiring reports, registration statements, anti-trust affidavits, and the payment of taxes and fees, shall be applicable, to the same extent and with the same effect, to all existing corporations, domestic and foreign, which were required to make such reports, registration statements and anti-trust affidavits, and to

pay such taxes and fees, prior to the enactment of this Act.

"(b) No provisions of this Act, other than those mentioned in sub-paragraph (a), shall be applicable to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, and non-profit corporations."

Section 27 of the same Act, page 429, merely provides that notices of annual meetings shall be in the bylaws of said corporation, however it does not in any manner specify how said notices shall be given. No part of the Corporation Act of 1943 relates to building and loan associations giving notice of a semiannual or annual meeting.

A well established rule of statutory construction is that different sections of statutes bearing upon the same subject must be harmonized, if at all possible. In *State vs. Freeland*, 300 S.W. 675, l.c. 677, the court said:

"When different sections of the statutes bear on a subject it is a rule of construction that such sections must be harmonized if possible.
* * * * *

After careful research we are unable to find any law making it mandatory upon building and loan associations to call a semiannual or annual meeting since the repeal of Section 8112, R. S. 1939, and since the Corporation Law of 1943 does not apply to building and loan associations, at least in so far as to giving of notice of meetings is concerned. We sincerely doubt if there is any authority for demanding such semiannual or annual meetings, however if building and loan associations do have, or anticipate having, such meetings, in view of Section 8208, supra, the bylaws of said associations should specify the time and place of each meeting of officers and shareholders, and since there is no law specifying how this shall be done, we are of the opinion that the bylaws should require a reasonable notice to be given of said meetings.

The courts have construed "reasonable notice" in many different ways, dependent upon the facts in the case. In

Maryland Casualty Co. vs. Dobbin, 108 S. W. (2d) 166, l.c. 173-174, the court construed "reasonable time" in which to present a check for payment to be the following day when the check is delivered to payee at the same place where the bank on which it is drawn is located. In so holding the court said:

"In determining what is a reasonable or an unreasonable time in which to present a negotiable instrument, regard is to be had to the nature of the instrument and the usage of trade and business, if any, with respect to such instrument and the facts of the particular case.

"The rule seems to be well established in Missouri that, where a check is delivered by the drawer to the payee in the same place where the bank on which it is drawn is located, a reasonable time for its presentment, where no cause for delay appears, is within the banking hours on the day of its delivery or within the banking hours on the next day after its delivery. (Cases cited)"

In Trustees of Belfast Academy vs. Salmond, 11 Mo. (Fairf.), 109-114, the court held that, where a majority of the trustees resided in the town, a notice of seven days to the owners of land, under which they were able to lay out a town-way, was reasonable.

In Johnson vs. Michigan Milk Marketing Board, 295 N. W. 346, l.c. 350, the Michigan Supreme Court said:

"Question is raised as to lack of notice of hearings. Section 19 requires publication in a newspaper or newspapers in general circulation through the marketing area at least a week before the date set for hearing, and this is sufficient notice."

In Sundheim Building and Loan Associations, Third Edition, Chapter 7, Section 88, page 88, we find the following rule as to requirements of building and loan associations for giving notice:

"When the by-laws fix the time and place of holding regular meetings of the stockholders, or of the board of directors, no notice thereof need be given; or if the time is fixed and the meeting is to be held at the usual meeting place none need be given; but if a meeting is held at another than the usual time or place, notice must be given. The by-laws should direct the board to hold regular meetings at such time and place as they may fix by special or standing order. Then when this order is made no notice of a directors' meeting need be given. Of course, it is usual, despite the by-laws, to give notice of all meetings, the only purpose in doing away with the necessity of notice being to prevent the necessity of actual notice, for it has been held that when the time of meeting has not been fixed by charter, by-laws or other competent authority, actual notice of every meeting is indispensable to make it legal for the transaction of even ordinary business. The by-laws should prescribe the method of giving notice of special meetings. In the absence of a by-law or custom to the contrary at least one full day's notice of a special meeting of the board of directors must be given, and where a definite and important transaction is contemplated at a special meeting of the contemplated action. A stockholder present at a meeting and voting without objection cannot contend that the meeting was irregularly called."

By way of illustration only, we refer you to the general statute relative to notice for corporations (Section 28, page 429, Laws 1943), which, as hereinabove stated, is not applicable to building and loan associations, but which requires among other things that notice of meetings shall be delivered or given not less than ten days, or more than thirty days, before the date of the meeting.

Therefore, it is the opinion of this department that, in the absence of any statutory provision relative to notice that shall be given for annual and semiannual meetings, if building and loan associations do have such meetings they should provide

June 27, 1945

in their bylaws for the time and manner of giving notice of said meetings, and this may be done by mailing notices to all the officers and shareholders of the association or giving notice by publication in some newspaper of general circulation in the city or county wherein the principal office of said association is located. In either case said notice to comply with the foregoing definitions as to reasonable notice should be given at least several days prior to the scheduled meeting.

Respectfully submitted,

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APPROVED:

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