

BUILDING AND LOAN) Intent of Legislature to protect savings and
ASSOCIATIONS) loan associations from acts of omission is
) satisfied by provision of savings and loan
) blanket bond, Form 22, lines 92-93. Lines
) 101-102 of Form 22 not in conflict with Sec-
) tion 29 of House Bill 481.

April 4, 1946



Honorable F. M. Horton, Supervisor
Division of Savings and Loan Supervision
State Office Building
Jefferson City, Missouri

Dear Sir:

Receipt of your request for an opinion from this department is hereby acknowledged and reads as follows:

"Your opinion is requested as to whether Standard Form Number 22 Savings and Loan Blanket Bond, copy of which is submitted herewith, meets the requirements of Section #29 of the new Savings and Loan Law.

"Some doubt has arisen especially concerning lines 92 and 93, on the subject of 'omissions', and lines 101 and 102, excluding directors except when acting as employees."

Section 29 of House Bill 481, which bill establishes the new Savings and Loan Law referred to in your request, is as follows:

"All directors,--and officers, and all employees and agents of an association having control of or access to moneys or securities of an association,--shall before entering upon the performance of any of their duties furnish bond with adequate corporate surety, in amount and form to be approved by the board of directors and the supervisor, payable to the association as an indemnity for any pecuniary loss the association may sustain of money or other property

through any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, robbery, burglary, hold-up, wrongful or unlawful abstraction, misapplication, misplacement, destruction or misappropriation, or any other dishonest or criminal act or omission by any such director, officer, employee or agent. In lieu of individual bonds, a blanket bond or bonds protecting the association from loss through any such act or acts on the part of any such director, officer, employee or agent may be furnished. The premiums on such bond or bonds shall be an expense of the association. Such bond shall provide that cancellation thereof by either the association or surety shall not become effective unless ten days written notice shall have been given to the supervisor,-- and if the association is an insured association, to the Federal Savings and Loan Insurance Corporation. All such bonds shall be filed with the supervisor, or some depository designated by him." (Under scoring ours.)

Lines 92 and 93 of the Savings and Loan Blanket Bond, Standard Form No. 22, are underscored in the following excerpt therefrom:

"Upon discovery of any loss under this bond a further premium, calculated pro rata upon the amount of such loss from the date of the giving by the Insured to the Underwriter of notice of such loss to the end of the premium year, shall be payable by the Insured to the Underwriter, and even though the further premium may not meanwhile have been actually paid, this bond shall be treated as reinstated so as to continue in force in the sum above stated in lines 4 and 5 as to loss or losses sustained while this bond is in force and discovered by the Insured prior to the expiration of twelve months after the termination of this bond, notwithstanding any previous

loss which the Underwriter may have paid or be liable to pay hereunder; provided, however, that the total liability of the Underwriter in respect of any loss or losses (a) caused by acts or omissions of any one person (whether one of the Employees or not) or acts or omissions in which such person is concerned or implicated, or (b) in respect of any one casualty or event, is limited to the sum above stated in lines 4 and 5 irrespective of the total amount of such loss or losses." (Underscoring ours.)

Section 29 of House Bill 481 anticipates that an association might suffer pecuniary loss through various methods, among which could be an omission of some duty on the part of a director, officer, employee, or agent. It is the intent of the Legislature that losses from such omissions be guarded against. Lines 92 and 93 are designed to cover that incident. We are of the notion that these lines are in accord with and satisfy the underscored portion of Section 29 of House Bill 481, supra, so as to give effect to such legislative intent.

The next step in your request includes lines 101 and 102 of the Savings and Loan Blanket Bond, Standard Form No. 22, which fall under the general heading of "But Warranted Free of all Claims" as follows:

"2. For any loss resulting directly or indirectly from the acts of any director of the Insured, except when performing acts coming within the scope of the usual duties of an Employee."

In connection with this last section it becomes necessary to determine just what the bonding company intends by the term "employee." Lines 26, 27, 28 and 29 of this bond form state:

"1. By reason of any dishonest, fraudulent or criminal act of any officer or employee of the Insured, or of any duly elected or appointed attorneys of the Insured (such officers, employees and attorneys being hereinafter called

Employees), including loss of Property by reason of any such act of any such Employee, whether acting independently or in collusion or combination with any other person or persons." (Underscoring ours.)

Although the word "director" does not appear among those who are to be called employees, we believe it to be included in the word "officer." A director is defined in this state in the case of State v. Bode, 113 S. W. (2d) 805, l. c. 808, wherein it is held:

"* * * Furthermore, the word 'director' is defined as follows:

"'One who, or that which directs,'
18 C. J. 1046.

"'One who directs; one who regulates, guides or orders; a manager or superintendent.' Webster's New International Dictionary.

"'One who, or that which directs; exp., a chief administrative official.' 1 New Century Dictionary."

We are therefore of the notion that directors are included in the term "officers" for the purposes of this bond form and as such are classified as employees thereunder. This being so, we do not believe lines 101 and 102 to be in conflict with the intent of Section 29 of House Bill 481, supra.

Conclusion

It is, therefore, the opinion of this department that lines 92 and 93 are competent to satisfy Section 29 of House Bill 481 on the subject of pecuniary losses arising due to an omission of duty on the part of a director, officer, employee or agent.

It is further the opinion of this department that under Savings and Loan Blanket Bond, Standard Form No. 22,

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directors are included in the term "officers" and as such are to be classified as employees for the purposes of the bond. Therefore, lines 101 and 102 are not in conflict with Section 29 of House Bill 481.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

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