

SAVINGS AND LOAN SUPERVISION: Holder of Installment Shares retired by directors of association entitled to receive full value thereof and earnings to date of retirement.

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

Dear Sir:

We hereby acknowledge receipt of your request for an opinion which reads as follows:

"As Supervisor of the Division of Savings and Loan Supervision of Missouri, I desire an opinion on a question now before me for determination.

"The Board of Directors of the St. Charles Building and Loan Association of St. Charles, Missouri, as of September 30, 1944, called for retirement all outstanding Free Installment shares, giving the holders thereof a choice of cash, or Optional shares, in lieu thereof.

"Retirement value was computed on the basis of Withdrawal Value as of June 30, 1944, with no earnings being allowed from that date to September 30, 1944. However earnings were paid and credited to all other shares for that period.

"Withdrawal Value,' as applicable to shares in Building, Savings, and Loan associations, is the amount payable to the shareholder should he voluntarily withdraw from the association prior to the maturity of the shares. This value is the actual, or book value, less a portion of the earnings allocated as a penalty for not completing the contract to purchase the shares.

"The power of the board to retire the shares is not questioned, as such power is clearly granted under Section 3223, Revised Statutes of 1939, this section also setting out the basis on which shares shall be retired. Reading in part as follows:

"---and provided further, that the matured shareholders shall be entitled to receive and shall be paid the full value of their shares at the time,---"

"The shares in question were retired by order of the Board of Directors, and at a value less than the full value, with no earnings allowed for the period June 30, 1944 to September 30, 1944.

"It would appear this was an involuntary withdrawal on the part of the shareholder and should have received the full value of the shares plus earnings to the date of retirement.

"While the earnings for the period June 30 to September 30 is not specifically covered by the above section of the Statutes, Section 32 of the By-Laws of the association reads as follows:

"SECTION 32. MONTHLY INSTALLMENT SHARES. WITHDRAWALS.

"Monthly Installment Shares may be withdrawn by the shareholder at any time, upon giving thirty days' notice in writing of such intention to withdraw, subject, however, to the limitations of Section 36 of these By-Laws, and when so withdrawn the shareholder shall be entitled to receive the Dues paid on such shares plus the dividends which may have been irrevocably credited on such shares prior to the date of such

withdrawal, provided, however, that if such Monthly Installment Shares shall be withdrawn within one year from the date of the issuance thereof, a discount of five per cent. of the dues paid on such shares shall be deducted from the amount which such withdrawing shareholder shall be entitled to receive.

"After the expiration of two years from the date of the issuance thereof dividends shall be irrevocably credited on Monthly Installment Shares at such rate as may be determined by the Board of Directors, such dividends, however, prior to the expiration of six years from the date of the issuance of such shares shall not exceed five per cent. per annum.

"Monthly Installment shares may, by order of the Board of Directors, be called in for cancellation at any time after the expiration of three years from the date of the issuance thereof, regardless of whether or not the member owning such shares has filed an application for their withdrawal and, when so called in for cancellation, shall be redeemed at the amount of Dues paid on account of such shares plus the dividends accrued thereon to the designated date of cancellation.

"Fines due by withdrawing members shall in all cases be deducted from the amount which such withdrawing member shall be entitled to receive under the provisions of this section. Fines already paid shall not be refunded."

"The Board of Directors have taken the position that the shareholders accepted either an Optional share account, or cash, for their Installment shares, and that such acceptance by them made the

transaction a voluntary withdrawal by the shareholder.

"The Department has held that this action, having been initiated by the Board of Directors, was retirement of shares by them, and that they were not justified in computing the values on the Withdrawal basis. Also, in view of provision in Section 32 of the association By-Laws providing that earnings shall be allowed to the designated date of cancellation, it would appear earnings should have been allowed to September 30, 1944.

"A copy of letter sent to the shareholders advising them of the action by the Board is attached for your information.

"Will you kindly advise me if, in your opinion, I am correct in assuming these shares should have been retired at their full value, including earnings to the date of retirement."

From the contents of your letter it is an inescapable conclusion that the Free Installment shares were not voluntarily withdrawn. The Withdrawal Value, therefore, is not the proper basis for computing the retirement value of these shares.

You refer to Section 8223, R.S. No. 1939, and we note that that section has been amended in part and reenacted in the Laws of 1943, at page 334, Section 4, wherein it is provided:

"Each shareholder shall pay to said corporation at or before each stated meeting of the directors or at such time as may be provided in the by-laws, as a contribution to the capital thereof, the sum fixed as dues for each and every share held by him. The board of directors of each association shall make semi-annually such appropriations for reserves as may be required by law or deemed advisable and then shall make in its discretion apportionment of net earnings to outstanding shares in the ratio the book value of each share bears to the total book value of all shares, except shares pledged in connection with real

estate loans which are outstanding on the effective date of this act, and which shares so pledged may be credited with dividends at a rate greater than the rate at which dividends are credited to other shares. All earnings so apportioned or distributed, but not paid in cash, shall be added to the individual share accounts, becoming a part of the book value and capital account and so appearing on the records of the association. And all amounts carried by any association upon its books, upon the effective date of this act, which actually represent earnings apportionable for a previous semi-annual period or periods to a particular share or class of share accounts but which have not been credited thereto, shall be apportioned and credited before the expiration of the current semi-annual period; provided, however that any association which, at the effective date of this Act, has outstanding monthly installment shares may continue allocating from net earnings, after required reserve appropriations, dividends to such installment shares at a rate greater than the rate at which it allocates dividends to other classes of shares until such outstanding installment shares are fully paid. Whenever an unpledged share shall reach its maturity, all payments thereon shall cease and the holder of such stock may withdraw the same as provided in this law. If not so withdrawn, such matured stock shall be and become fully paid stock of the association in a sum equal to the matured value of said shares: PROVIDED, HOWEVER, that at no time shall more than one-half of the funds in the treasury be applicable to the payment of such matured shares without the consent of the directors; AND PROVIDED further, that the directors of said corporation may, at their discretion, under rules made by them, retire the unpledged full paid shares, or prepaid shares, at any time, and may in like manner retire installment shares at any time after the expiration of three years from the date of the issue thereof by enforcing the withdrawal of the

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same; AND PROVIDED further, that the matured shareholders shall be entitled to receive and shall be paid the full value of their shares at the time, less all fines and their proportionate part of any loss. The particular shares to be so involuntarily retired shall be determined under such regulations as the directors may prescribe. Borrowing shareholders, for each share borrowed upon, shall, in addition to the dues aforesaid, pay the stated periodical payment of interest, and in associations in which the premium is paid by installments, the periodical payment of premium agreed upon until such shares shall reach the ultimate value thereof, when said shares and said loan shall be declared cancelled and satisfied. And association may, in its by-laws, provide that the holders of free or un-borrowed shares shall not receive any more than the face value of their shares less the average premium paid by the borrowers of the association up to date; AND PROVIDED further, that when any shares of stock of an association have, in the opinion of the board of directors, reached their ultimate value, such fact shall be reported to the supervisor of building and loan associations; and no stock shall be matured or money paid thereon except with the consent and approval of said supervisor of building and loan associations. An association may by agreement with a shareholder pay the value of matured shares to the shareholder in agreed monthly installments; and where there is such agreement the association shall not be required to make any other payments in the repurchase of such matured shares, notwithstanding any other provision of this chapter." (Underscoring ours.)

We have underscored that part included by your correspondence plus a statement which applies to the present situation and provides that, if the directors at their discretion retire installment shares, they do so by enforcing the withdrawal of such shares, which is sufficient to show the involuntary nature of the retirement. Having been so retired, the matured shareholders are then entitled to receive and be paid the full value of their shares at the time of their retirement. Their retirement was called for as of September 30, 1944, and the holders of these retired shares

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are entitled to their part of the earnings to that date.

We note the third paragraph of Section 32 of the By-Laws concerning Monthly Installment Shares and Withdrawals is a rewording of the underscored portion of Section 8223, supra, and it is under this section and paragraph that the retirement was undertaken.

CONCLUSION

It is, therefore, the opinion of this department that, when the directors of a building (savings) and loan association call for the retirement of outstanding Installment Shares, they are to be retired at their full value, plus earnings to the date of retirement.

Respectfully submitted,

J. MARTIN ANDERSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

JMA:LR