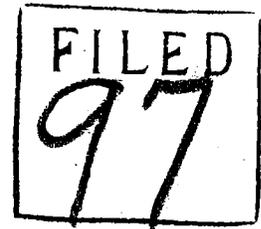


July 21, 1961



Honorable Paul E. Williams
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Paul:

You have written to us concerning an interpretation of Sec. 369.390, RSMo 1959. As we understand the situation the facts are as follows. A savings and loan association makes a loan (first mortgage) to an individual with the knowledge that subsequent to this loan a second mortgage loan will be made by a member of the board of directors of the savings and loan association to the individual. Later the loan is refinanced by a first deed of trust taken by the association when it makes a loan to pay off both its original loan and the loan made by the director.

Sec. 369.390, RSMo 1959 reads as follows: LOANS TO DIRECTORS AND OFFICERS FORBIDDEN - EXCEPTIONS

"1. No real estate loan shall be made to a director or officer or to a partnership or firm in which a director or officer is interested, or to a corporation of which a director or officer of the association is a director, officer, stockholder or creditor or upon real estate in which any director or officer has an interest as mortgagee; provided, however, that a real estate loan may be made to a director or officer upon the security of a first mortgage or deed of trust upon the single family residence or homestead of such director or officer where such loan has first been approved in writing by a two-thirds majority of the board of directors and a copy of such written approval has been recorded in the minutes of the board of directors.

2. The provisions of this section shall not be applicable to a loan to be guaranteed under the Servicemen's Readjustment Act of 1944, or to a loan which has been insured by the Federal Housing Administrator."

Honorable Paul E. Williams - 2.

July 21, 1961

Under this section and the facts as set forth above, we make the following observations.

(1) There is no violation of Sec. 369.390 when the association makes a loan and the director later on makes a loan and takes a second deed of trust, but where it is agreed in advance to do this, it probably violates the intent of the statute even though not the letter thereof.

(2) There is a violation of Sec. 369.390 when the refinancing takes place, because in that situation the director is a mortgagee and the making of a loan by the association in such a situation is prohibited by Sec. 369.390.

(3) I find no criminal statutory authority under which the Prosecuting Attorney could commence a criminal proceeding under these circumstances.

(4) Under Sec. 369.515 the Supervisor of the Savings and Loan Division could take action.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

oh