

SAVINGS AND LOAN ASSOCIATIONS:

Savings and loan associations subject to provisions of Chapter 369 RSMo 1959 have no express or implied power to service loan agreements of business corporation which effect the collection of loan contracts which the business corporation was instrumental in effecting between borrower and lender, when such loan contracts at no time become the property of the savings and loan association.

January 18, 1962

Honorable Gordon E. Church, Supervisor
Division of Savings and Loan Supervision
Jefferson Building
Jefferson City, Missouri

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36

Dear Mr. Church:

This opinion is rendered in reply to your inquiry of November 9, 1961, posing a question which we restate in the following language:

May a savings and loan association operating under the provisions of Chapter 369 RSMo 1959, as amended, enter into a contract with a business corporation to assume said corporation's contract servicing agreements which effect the collection of loan contracts which the business corporation was instrumental in effecting between a borrower and lender, such loan contracts at no time becoming the property of the savings and loan association?

Savings and loan associations subject to the provisions of Chapter 369, RSMo 1959, as amended, were formerly known as building and loan associations. We here search for the scope of charter powers of such associations. In the case of Appeal of Powell and Doyle, 93 Mo. App. 296, l.c. 300, such associations are referred to in the following language:

"The defendant is purely a creation of the statute, having only such powers as the statute gives and such as are necessarily implied. But we have not seen any authority which in the least lends countenance to the suggestion, that when a corporation is clothed with certain limited powers, guarded with

Honorable Gordon E. Church

the most explicit directions for the manner of their exercise, that it is in the province of such corporation to depart from such directions in the conduct of its business."

In Endlich On Building Associations, Second Edition, Section 217, we find the subject of powers of these associations treated in the following language:

"But certain powers being specifically granted, all those fairly and necessarily implied in, or incident to the same, follow with the grant, -- as, likewise, do all those essential to the declared object and purpose of the association; not simply convenient, but indispensable. To this extent, and no further, goes the contract implied between the State and the corporation. It lends no legitimacy to the transaction of other business, or the use of corporate powers for objects wholly without the scope and meaning of the charter. The corporation cannot leave its legitimate business in the background, and assume unwarranted functions, without rendering every step upon the unauthorized path illegal and void. Neither the corporation nor its officers can do any act, or make any rule or contract, or incur any liability not authorized either expressly, or by implication from the necessities of its lawful business. All acts beyond the scope of the powers granted, and all powers granted, however explicitly, under a charter based upon a general statute, which are repugnant to such statute, are void, and infect, with that inherent weakness, whatever acts are done by virtue of them."

When a savings and loan association undertakes to service any loan not made by it, or acquired through lawful purchase, it obligates itself to accept deposit payments and act as fiscal agent for persons lawfully entitled to the proceeds of

Honorable Gordon E. Church

such loan. Section 369.395 RSMo 1959 does specifically authorize savings and loan associations to act as fiscal agent for the United States in the following language:

"An association shall have power to act as fiscal agent of the United States, and, when designated for that purpose by the Secretary of the Treasury, may perform under such regulations as he may prescribe all such reasonable duties as fiscal agent as he may require."

The power to act as a fiscal agent expressed in Section 369.395 RSMo 1959, supra, is the only such power we have discovered in Chapter 369 RSMo 1959, as amended. In view of the fact that no investment power, or power to purchase and acquire title to the loans to be serviced, is involved in the question being determined here, it must reasonably be concluded that the power sought to be exercised is neither an express power or an implied power to be exercised by a savings and loan association subject to the provisions of Chapter 369, RSMo 1959, as amended.

CONCLUSION

It is the opinion of this office that a savings and loan association operating under the provisions of Chapter 369 RSMo 1959, as amended, has no express or implied authority to enter into a contract with a business corporation to assume said corporation's servicing agreements which effect the collection of loan contracts which the business corporation was instrumental in effecting between a borrower and lender, when such loan contracts at no time become the property of the savings and loan association.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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