POLITICAL SUBDIVISIONS:
SAVINGS AND LOAN:
COUNTIES:
CITIES, TOWNS AND VILLAGES:

Section 369.325, RSMo 1969, does not violate Article VI, Section 23 of the Missouri Constitution of 1945, and that any municipality or political subdivision of the State of Missouri may legally invest its funds in a savings and loan association pursuant to those conditions set out in paragraph 1 of Section 369.325, RSMo 1969.

OPINION NO. 148

October 5, 1970

Honorable Zane White
Prosecuting Attorney
Phelps County Court House
Rolla, Missouri 65401

FILED
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Dear Mr. White:

You requested this office's opinion with regard to the following matter:

> "Does the Phelps County Court have authority to invest county funds in savings and loan associations. . . ."

Section 369.325, RSMo 1969, provides as follows:

> "1. Accounts of any association doing business in Missouri, whether chartered by the state of Missouri or another state or the United States of America, and which holds certificiate of insurance from the Federal Savings and Loan Insurance Corporation:
>
> * * *
>
> "(3) Shall be legal investments for funds of any municipality or political subdivision of the state of Missouri; . . . ."

The above statute authorizes the investment which your county court contemplates. However, in Attorney General's Opinion No. 67, delivered March 16, 1959, to Paul R. Sims, then Supervisor of the Division of Savings and Loan Supervision of Missouri, this office ruled that paragraph (3) of Section 369.325, RSMo 1969, when read in conjunction with paragraph 1 of said section, was in violation of Article VI, Section 23 of the Missouri Constitution of 1945, and

that it was, therefore, unconstitutional for a municipality or political subdivision of the State of Missouri to invest its funds in a savings and loan association. Article VI, Section 23 of the Missouri Constitution of 1945 provides:

> "No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

For the following reasons, Opinion No. 82, March 16, 1959, has been withdrawn.

The issue raised by your opinion request is whether the investment of these funds in a Savings and Loan Association would come within Article VI, Section 23 of Missouri's Constitution which provides that a county may not:

> ". . . own or subscribe for stock in any corporation or association."

Thus, it must be determined whether a deposit of money by a municipality or political subdivision of the State of Missouri in a savings and loan association constitutes the ownership of corporate stock.

In the case of In Re Estate of Morey, 38 Ill.2d 575, 232 N.E.2d 734 (1967), the Supreme Court of Illinois was concerned with the question of whether a withdrawable capital account in a savings and loan association was jointly or individually owned. Under Illinois law, the creation of joint rights in a bank account required the execution of a written agreement to that effect signed by the parties, whereas in the case of corporate stock, the simple registration of ownership on the corporation books in the appropriate statutory language was sufficient to create joint rights in the stock. Id. at 232 N.E.2d 736. In holding that the savings and loan deposits were not corporate stock, the Illinois Supreme Court noted:

> ". . . there are important factual distinctions between this certificate and a share of corporate stock which mitigate against treating them alike. Whereas a share of corporate stock may not be issued until consideration in the amount of its par or stated value is received . . . , the instant certificate could be and

> was issued with payment of its matured value to be made by installments and the crediting of association dividends. In addition, all or part of the capital paid in for the certificate was withdrawable at will before or after full payment of the matured value of the share. These factors unquestionably indicate that the certificate cannot properly be considered in the category of a corporate stock and substantiate our conclusion, based on the statutory provisions, that the certificate represents a withdrawable capital account. . . .'" Id. at 737

In Porter v. Aetna Casualty and Surety Company, 370 U.S. 159, 8 L.Ed.2d 407, 82 S.Ct. 1231 (1962), a judgment creditor of an incompetent air force veteran attached two accounts in a federal savings and loan association which had been established by the veteran's committee with funds received from the Veterans' Administration as disability compensation for the veteran. The issue was whether the funds in the account were exempt from attachment under 38 U.S.C., Section 3101(a), which provides that payments of benefits due or to become due under any law administered by the Veterans' Administration shall be exempt from the claim of creditors and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The Supreme Court noted that the exemption was lost when the funds "'lost the quality of money'" and were converted into "permanent investments." Id. 370 U.S. at 160. Thus, the issue was whether the money deposited in the savings and loan association lost the quality of the monies and thus became converted into a permanent investment. In holding that the deposits retain the quality of monies, the Supreme Court stated:

> ". . . a withdrawal from the accounts here involved could be made 'as quickly as a withdrawal from a checking account. . . .' In addition, the integrity of the deposits was assured by federal supervision of the associations plus federal plus federal insurance of the accounts. Under such conditions the funds were subject to an immediate and certain access and thus plainly had 'the quality of moneys'. . . ." Id. 370 U.S. at 161-162

Thus, the Supreme Court emphasized that a savings and loan account was neither speculative nor a permanent investment because the account was insured by the FSLIC and because it was readily convertible into cash.

Finally, it should be noted that in 1969, the Seventy-fifth General Assembly of the State of Missouri amended Section 369.310, RSMo 1969, which prior to the amendment, prohibited an association from accepting deposits of money or agreeing to pay interest or a guaranteed rate of dividends. The newly enacted Section 360.310, RSMo 1969, provides in relevant part as follows:

> ". . . An association may raise capital in the form of such savings deposits or other accounts, for fixed, minimum, or indefinite periods of time (all of which are referred to in this section as savings accounts and all of which shall have the same priority upon liquidation) as are authorized . . . . Holders of savings accounts of an association shall, to such extent as may be provided by its by-laws or by regulations of the supervisor, be members of the association, and shall have such voting rights and such other rights as are thereby provided. . . ."

Thus, as amended, Section 369.310, RSMo 1969, allows a savings and loan association, when authorized by its bylaws or by regulation of the supervisor, to establish savings accounts for fixed or indefinite periods of time. The specific prohibition against an agreement to pay interest in the prior statute was deleted. However, this section is an enabling section only because it requires that the changes contemplated may be adopted as authorized by the bylaws of the association or by regulation of the supervisor.

Investments in savings and loan association are legally sui generis. Such investments do not involve the risk of fluctuation associated with the value of corporate stock. Deposits in a savings and loan association are insured by the Federal Savings and Loan Insurance Corporation, which guarantees the security of at least a portion of the investment. The savings and loan industry is regulated by Chapter 369, RSMo 1969, and the regulatory scheme contemplated by this chapter is comparable to that under which the banking industry is regulated. Savings and loan associations are restricted as to the type of investments that may be made with monies deposited with them, the fiscal condition of the institution is subject to periodic examination by the regulatory authorities, and the establishment of new offices must be approved by the supervisor. Regulation is thus comparable to the banking industry rather than to industrial corporations. It is recognized that a depositor in a savings and loan institution has certain rights other than a depositor in a bank. For example, a depositor in a savings and loan association has certain managerial rights not available to a depositor in a banking institution. Section 369.310, RSMo 1969. That

a deposit in a savings and loan institution has legal attributes which differ from a deposit in a banking institution is, however, not controlling. Rather, the distinction between a deposit in a savings and loan association as compared to the prohibited investment in Article VI, Section 23, must be the determining factor.

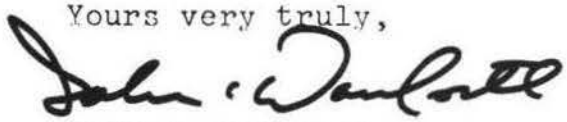
In our opinion, the characteristics of a deposit in a savings and loan association are sufficiently dissimilar to those of an investment in corporate stock so as not to violate Article VI, Section 23 of Missouri's Constitution. Thus, Section 369.325(1) (3), RSMo 1969, does not violate Article VI, Section 23 of the Missouri Constitution.

CONCLUSION

It is, therefore, our conclusion that Section 369.325, RSMo 1969, does not violate Article VI, Section 23 of the Missouri Constitution of 1945, and that any municipality or political subdivision of the State of Missouri may legally invest its funds in a savings and loan association pursuant to those conditions set out in paragraph 1 of Section 369.325, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Craft.

Yours very truly,



JOHN C. DANFORTH
Attorney General