SAVINGS AND LOAN ASSOCIATION: Construction of Section 369.360 MoRS Cum. Supp. 1953, with respect to making loans in three specific instances.

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March 16, 1954

Mr. Morris G. Gordon, Supervisor
Savings and Loan Supervision
Department of Business & Administration
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion to construe Section 369.360 MoRS Cum. Supp. 1953, respecting the right of Savings and Loan Association to make loans in the following instances, where the purchaser has a sufficient equity to safeguard the loan and otherwise complies with the law and bylaws of the association:

"1. Where an originally built brick flat with four entrances is transformed to eight efficiency apartments without changing the four entrances.

"2. Where there is a motel or tourist court with ten cabins or motels in the yard, the owner having residence in one.

"3. A farm of 90 acres with a one family 7 room residence."

Section 369.360 MoRS Cum. Supp. 1953, reads:

"1. An association shall have power to make, buy and sell direct reduction periodical installment or term loans of any amount secured by first liens on real estate, subject to the following limitations: Each such loan shall be secured by home property, as herein defined, and shall not exceed twenty thousand dollars; provided, that an association may have invested an aggregate amount, not exceeding fifteen per

cent of the aggregate balances of all loans held by it, in loans exceeding twenty thousand dollars each secured by first liens on home properties and in loans secured by first liens on other real estate, but no such loan shall exceed one per cent of the assets of the association or twenty thousand dollars, whichever is the greater.

"2. 'Home property' shall mean real estate upon which there is located, or will be located pursuant to a home loan, a dwelling or dwellings for not more than four families; but such a property shall not lose its home status because of the use of it in part for business or farm purposes.

"3. No association, except with the consent of the supervisor, shall sell in any consecutive twelve months period, except by making a bulk sale of all or substantially all of its assets as provided elsewhere in this chapter, real estate loans the aggregate of the principal balances of which, as of the respective dates of sales, exceed twenty-five per cent of the aggregate balances of all real estate loans as of the beginning of such twelve months period, or shall make sale of any real estate loan for an amount less than the balance, including interest, owing thereon."

The foregoing statute vests authority in saving and loan associations to make a loan secured by home property as defined in said statute, when complying with other provisions of said statute as to the amount of loan, security, etc.

In order to construe said statute, we must first determine what constitutes a dwelling as used therein in order to determine if the buildings described in each hypothetical question are dwellings. There are statutory definitions of dwellings, namely, Section 560.015 and 065 RSMo 1949. However, such definitions apply to buildings wherein offenses are committed against property with respect to arson, and burglary and therefore, such definitions are hardly applicable for use in this instance.

It was held in Sanders v. Dickson, 89 SW 577, 582, 114 Mo. App. 229, that a dwelling is one of a multiple meanings; however, in its broadest sense, the word denotes a building used as a human abode, home, though a suite of rooms occupied by one man, may be a dwelling. Also in Fox v. Sumerson, 13 At. 2d, 1, 2, 338 Pa. 545, the court held that an apartment house is nonetheless a dwelling

house though occupied by a number of families. See also Barnett v. Vaughn Institution, 119 N.Y.S. 45, 46, 134 App. Div. 921, State v. Garity, 46 N.H. 61, 62. In Luedke v. Carlson, 41 NW 2d, 552, l.c. 554, the court held that a dwelling house as defined in a city zoning ordinance "as a dwelling other then a hotel providing lodging for eight or more persons", including buildings of a motor court which had four rooms each with accomodations for eight persons in each building.

In view of the foregoing definitions, we believe that the flat, tourist camp and farm referred to in this request, all can be classified as a dwelling house, as that term is used in Section 369.360 supra.

A well established rule of statutory construction is that all provisions of the statute should be construed together and effect given to all if possible. Logan v. Matthews, 52 SW 2d 989, 330 Mo, 1213.

In Anderson et al. v. Metropolitan Building Company, 163 SW2d 1024, l.c. 1030, the question arose as to covenants in a deed restricting property for residential purposes only, one restriction being "that said land should be occupied and used by said second party, its assigns, including all tenants for residence purposes only, and not otherwise." The property in question was, however, being operated not only as a residence but by a tenant as a rooming and boarding house. The court, in holding that said property was being operated as a business purpose and therefore violated said restrictions in the deed, said: (l.c. 1030)

> "* * * We are here concerned in determining whether the use made of the property by the tenant, with the knowledge, acquiesence and consent of the owner, is for 'residence purposes only, and not otherwise,' The owner contends that the use made by the tenant is not a violation of the restrictions and seeks to enjoin interference by plaintiffs. The question is whether the use made of the property, the primary purpose of the occupation, violates the restriction. The restrictive covenant expressly deals with the occupation and use by the owner, including tenants. Defendant Harden is not occupying and using the property 'for residence purposes only, and not otherwise,' regardless of the use the roomers may be making of the property. Her use of the property is a business purpose, even though, as an incident to the carrying on of such business, she may reside on the pre-

mises. See Pierce v. Harper, 311 Mo. 301, 306, 278 S.W. 410, where it was held that a boarding house was not a private dwelling-house or home for the use or occupancy of one single family and that such use was in derogation of the restrictive covenants affecting the premises even though defendant and her family used the premises as a place of residence."

"We hold that the parties intended to provide for a high class exclusive residence district and to prohibit expressly the operation of a business upon the premises or the use of any part of said premises for a business purpose, and, therefore, that the operation of a boarding and rooming house, as conducted by defendant Harden was a clear violation of the restriction. * * * "

By the same token, we believe renting the efficiency apartments in the flat building is using said building in part for business purposes. Therefore, this would amount to no bar in obtaining a loan under said statute.

There can be no question that the farm property is eligible for a loan under the last mentioned exception in said statute providing, of course, other conditions in said statute are fully complied with in every respect. Furthermore, the motel or tourist court likewise can qualify for such loan when all other conditions of such statute are met.

CONCLUSION

Therefore, it is the opinion of this department that all three of the properties referred to in this request meet the requirements of home property as defined in Section 369.360 MoRS Cum. Supp. 1953, and if all other requirements of said statute are complied with, Savings and Loan Association may loan money on said properties.

The foregoing opinion, which I hereby approve was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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