SAVINGS AND LOAN ASSOCIATION: MINOR SHAREHOLDERS MAY MAKE VALID CONTRACT WITH ASSOCIATION, WHEN:

Under provisions of Sections 369.150 and 369.155, Laws of Missouri 1953, page 229, minor's agreement to surrender certificates of shares upon payment to him of cash value, his receipt and release of liability to the association is valid when it clearly appears minor understands contract. When fully executed by parties, minor cannot subsequently avoid contract during minority or upon reaching majority and bring action to recover shares or their value. 2) Savings and loan association cannot reissue certificates of shares of minor in name of person other then the minor, or in names of minor and another. 3) Said sections do not authorize minor to contract for assignment, transfer and delivery of his certificates of shares with any party other than issuing association, and contract for assignment not with association may be avoided during minority or upon reaching majority, and minor may bring action to recover shares or their value.

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October 24, 1955

Honorable Morris G. Gordon
Supervisor
Division of Savings and Loan Supervision
Jefferson Building
Jefferson City, Missouri

Dear Mr. Gordon:

This department is in receipt of your recent request for a legal opinion of this department which reads, in part, as follows:

> **"Mrs. Mildred Dale, a widow, was the owner of a certificate for five shares of stock in the Shelbina Building and Loan Association, valued at $500.00. Subsequently she remarried and some time after her remarriage she brought her certificate to the Secretary of the Association and requested him to issue a new certificate for the same number of shares payable to Mildred Dale Weaver or Robert William Collins. At the time of the reissue she told the Secretary that in the event of her death Robert William Collins was to be the absolute owner.**
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> **"Recently Mrs. Weaver died leaving surviving her her husband, but no issue or descendants. No administration is being had upon the estate.**

"It now develops that Robert William Collins was her nephew and is a minor of the age of five years. Section 369.155, revised statutes of Missouri as amended says that the minor can cash the certificate, receive the money, and his receipt or acquittance shall be a valid and sufficient release and discharge of the Association for any payment so made. The minor has no guardian.

"If the Association took up his certificate, paid him and took his receipt, and subsequently he lost the fund himself or through others, do you think the receipt would be a valid release if he brought suit after he arrived at the age of 21?

"Suppose he came to the Secretary, brought his certificate, and asked the Association to issue a new certificate to someone else or to himself and someone else, do you think he can do it? Do you think he could assign, transfer and deliver the certificate to any other person?

****."

From the above statement of facts it appears that the first inquiry is whether or not a minor, who owns shares of stock in a savings and loan association, can legally surrender his stock to said association and, upon being paid the cash value of the stock, give a valid receipt and release to the association so that upon reaching twenty-one years of age such minor will be precluded from avoiding his contract and bringing a suit to recover the stock or its value.

It appears that the second question inquires whether or not a minor can legally surrender his certificate of stock to a savings and loan association and have a new one issued in the name of a person other than himself, or in his own name and that of another person, and also if he can legally assign, transfer and deliver his certificate to any other person.

Before entering into our discussion we call attention to Section 457.010, RSMo 1949, which provides who shall be considered minors in Missouri. Said section reads as follows:

> "All persons of the age of twenty-one years shall be considered of full age for all purposes, except as otherwise provided by law, and until that age is attained they shall be considered minors."

Since both inquiries of the opinion request involve the power of a minor to enter into a contract under the particular circumstances referred to, it is believed proper to refer to the general rule prevailing in Missouri and most jurisdictions in regard to a minor's capacity to contract. The general rule has been given in Volume 43, C.J.S., Page 162, and is as follows:

> "The general rule, * * * is that, with certain exceptions, as in the case of contracts for necessaries, * * * and those entered into in the performance of a legal duty, and in some special cases of actual and active fraud, the contracts of an infant, whether executed or executory, are voidable, and such contracts of an infant are voidable at his election or option after attaining his majority, and not void, in the absence of a statute providing otherwise. In this connection it has been said that one deals with an infant at his peril, particularly when doing so with knowledge of his incapacity."

This rule, such as other general rules, has exceptions, and it appears that one of the exceptions is that contracts of minors authorized by statute are not voidable by the minor but are legally binding.

Sections 369.150 and 369.155, Laws of Missouri, 1953, page 229, are statutes regulating the issuance of membership certificates to joint account holders of savings and loan associations, and also regulate the issuance of membership certificates to minors. It is our thought that the latter section is an exception to the general rule, and such contracts of minors are not voidable for reasons to be presently noted.

Section 369.150 reads as follows:

> "1. An association may issue membership certificates in the name of two or more persons, whether minor or adult, and in form to be paid to any one or more of them, or the survivor or survivors of them.

"2. Such account, and any additions made thereto by any of them, shall become the property of such persons as joint tenants and shall be held for the exclusive use of the persons so named therein, or the survivor or survivors of them.

"3. And such payment and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to said association, whether any one or more of the persons named be living or dead, for all payments so made by the association on such account prior to the acknowledgment of receipt by, or service by an officer empowered to make service of process upon, said association at its home office of notice in writing signed by any one of such joint tenants not to pay such account in accordance with the terms thereof.

"4. If there are more than two persons named in such membership certificate and one of such persons dies, the account represented by such certificate shall become the property of the survivors as joint tenants. Such a joint account shall create a single membership in an association."

Section 369.155 reads as follows:

"An association may issue membership certificates to minors. Such an account shall be held for the exclusive right and benefit of such minor, free from the control or lien of all persons. Payment to, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge of the association for any payment so made; provided further, that in the event of the death of such minor the receipt or acquittance of either parent or of a person standing in loco parentis to such minor shall be a valid and sufficient release and discharge of the association for any sum or sums not exceeding in the aggregate five hundred dollars unless the minor shall give written notice to the association not to accept the signature of such parent or person."

The former section is basically the same as Section 8257.55, R.S. Mo. 1939, Laws of 1945, p. 1578, sec. 56, regarding the joint ownership of savings and loan certificates. In the case of Weber v. Jones, 222 S.W. (2d) 957, at l.c. 959, the court held that no case had been cited and none had been found construing Section 8257.55, R.S. Mo. 1939, but that similar statutes relating to banks and trust companies had been construed. The court also held that while accounts opened according to the provisions of the banking statutes are presumptively joint accounts, and the successor takes as a joint tenant, this is a rebuttable presumption and it may be shown that such was not the intention of the depositors.

From the holding in the above-mentioned case, we believe that such similar banking and trust company laws would, in the absence of any cases construing Sections 369.150 and 369.155, supra, (and we find none) be helpful in construing said sections, and we shall refer to any statutes or decisions construing the banking laws as may be necessary in the course of our discussion.

The case of Phillips v. The Savings Trust Company, 231 Mo. App., 1178, involved the statutes regarding banks and trust companies. This was an action to establish a bank balance of twelve dollars belonging to plaintiff, as a preferred claim against defendant, The Savings Trust Company of St. Louis, which trust company was in charge of the commissioner of finance for the purpose of liquidation. Plaintiff's petition alleged that he was a minor and that his claim was based upon deposits of money made by him in said Savings Trust Company, which company had knowledge of plaintiff's minority at such time. From an adverse ruling of the circuit court plaintiff appealed to the St. Louis Court of Appeals, where the judgment of the lower court was affirmed.

In passing upon the general rule prevailing with reference to the validity of contracts entered into by minors, as the rule applied to facts involved in the case, the court said, l.c. 1184, 1185:

> "It is settled law that a minor is not absolutely incapable of contracting in the sense that his contract is absolutely void, but his contract is voidable only, which means that the minor has a right to disaffirm the contract at any time during his minority or within a reasonable time after attaining his majority.
>
> "But the disaffirmance of a contract made by a minor nullifies it and renders it void ab

initio. (Hamlin v. Hawkins (Mo.) 61 S.W. (2d) 348, l.c. 350; 31 C.J. 1060, 1071.) The rule, however, has its exceptions and limitations.

"In Pinnell v. St. Louis-San Francisco Ry. Co. (Mo.), 263 S.W. 182, involving a contract respecting a pass issued by defendant to plaintiff, who was a minor, the court said:

" 'It seems to follow, therefore, as a legitimate conclusion from the facts in this case that the use of this pass by the deceased cannot be otherwise construed than as a benefit. As such it may be included in the constantly widening category of contracts which when made by an infant are as valid and binding as if he were of full age.'

"The text of 31 Corpus Juris, at page 1012, reads as follows:

"'Where an infant is in absolute and lawful possession of money as his own property, he has a right to deposit it in any place for safe-keeping, as in a bank, and he has a right to reclaim it at any time, although he is yet a minor, and the person or institution so paying it to him assumes no risk in so doing.'

"In Smalley v. Central Trust & Savings Co., 72 Ind. App. 296, plaintiff, who was a minor, was in possession of $1600, which was here own money. She deposited the money with the defendant subject to check. At the same time defendant furnished her with a pass book showing the deposit duly credited therein, and furnished her with blank checks to use in checking against her deposit. Afterwards, plaintiff, while yet a minor, checked the deposit out. Subsequently, plaintiff on attaining her majority sued defendant for the amount of her deposits. From a judgment against her plaintiff appealed. In disposing of the appeal, the court, after stating that the record did not disclose whence appellant had received the money, said:

"'From whatever source it was received, it was her own property, and under her own control. What should she have done with it? Should she have kept it on her person and dealt it out from time to time as necessity required, or should she have deposited it in a reputable banking institution until she required it? All are ready to say that this latter course was the sensible one for her to pursue. But, if appellant's contention is correct, she could not so deposit her money, except at the risk of the bank refusing to repay it to her, until she is twenty-one years of age, and the bank would have been fully justified in so refusing for any payment to her or to her order would have been at its peril. It would have assumed the risk that at her majority she would disaffirm the payment, and demand her money again. It is the common practice of banking institutions to accept the deposit of minors, sometimes of children, of their earnings, for Christmas saving, or for the purpose of accumulating for some otherdefinite purpose, or as a means of training such depositors in habits of frugality. But if such deposits cannot be repaid to the minor depositors until they have reached their majority, then such banking business must of necessity end, for the banks cannot afford to assume the risk. Appellant must fail in her contention. We hold that when appellant deposited her money in appellee's bank, as she had a lawful right to do, the relation of debtor and creditor between the appellee and appellant was created, that appellant had a right to her money again, that it was the duty of appellee to restore it to her, upon a proper check or demand, and that the bank assumed no liability in so doing. (Hobbs v. Godlove (1861), 17 Ind. 359, 362.) We do not by this decision disturb the general rules of law as to the validity of contracts of minors. We do hold, however, that where a minor is in absolute and lawful possession of money as her own property, whether from the proceeds of settlement with her guardian, as compensation for services rendered, or from any other lawful source, puts it in a bank, or other place of safe keeping, rather than to carry it on her person, she has a right to reclaim it at any time, even though she is yet a minor, and the person or institution so paying it to her assumes no risk in so doing.'"

From the ruling of the court given in that portion of the opinion quoted above, it is apparent that the statute authorizing minors to deposit their money in banks and to withdraw it without the guidance or direction of any adult person is to be considered as one of the exceptions to the general rule, and that such contracts of minors are binding. The ruling has the practical effect of construing Section 5465 R. S. Mo. 1929, as placing minors on the same footing as adults with respect to bank deposits made by them.

From the language used in Sections 369.150 and 369.155, supra, and in view of the holding of Phillips v. The Savings Trust Company, supra, it is believed to be the legislative intent, in the enactment of said sections, that the issuance of membership certificates by savings and loan associations to minors and the ownership of said certificates by minors is to be in the same manner as such transactions are carried on between the associations and adults.

Section 369.155, supra, specifically authorizes an association to issue membership certificates to a minor as sole and absolute owner of the account, to be held for the exclusive right and benefit of the minor and free from the lien or control of all persons. The section further provides the minor may surrender his certificates, and that the acquittance of his account, the payment to him of the value of his shares, and his receipt of that amount shall be a valid and sufficient release and discharge of the association for the payment made by it.

From a casual reading of Section 369.155, supra, it would appear that when a savings and loan association is presented with certificates of shares in the association by the minor owner for surrender, the association shall accept them and pay the owner the cash value. By taking the minor's receipt for such payment, together with his release of liability of the association it would further appear that in the event the minor subsequently changed his mind regarding the transaction, he would be legally estopped from suing the association for the certificates or their value at any time during his minority or within a reasonable time after reaching his majority. However, it is our contention that a casual reading does not disclose the true meaning of the section, for said section is not believed to contain any such provisions. It is further believed not to have been the legislative intent to enact, and that they did not enact a law of this nature, which in effect, abolishes all restrictions and protections heretofore placed about minors with reference to the validity of their contracts.q

While the section does not expressly set out certain restrictions, yet, it is evident they are implied from the language used, and must be followed as closely as if they had been stated in so many words. To consider the statute in any other manner would lead to absurd and ridiculous results. For example, if construed in the latter manner it would be permissible for a child of tender

years to present his certificates, or rather when a very young child and his certificates were presented to the association by his parent, with the parent's statement that the child wanted to surrender his certificates and receive the cash value of same, it would be the duty of the association to accept the certificates and pay the money on them as requested, regardless of the fact the owner was too young to sign his name or of insufficient intellect to appreciate the legal effect of the transaction. Undoubtedly, such a loose construction of the law would open the door to unscrupulous persons to practice all kinds of fraud upon minor certificate holders.

Fortunately, the statute does not abolish all restrictions, and there is no likelihood of any unpleasant occurrences similar to those mentioned above coming to pass, to the detriment of both the minor and the association in which he owns shares. The implication is that an association is required to first ascertain as best it can, if the minor is of sufficient age and intellect to understand and does understand the nature of the contract into which he is about to enter. After having fully satisfied itself of these facts the association may then safely accept the certificate surrendered, pay the minor the value of same and receive the minor's receipt and discharge of liability. Under these circumstances it would appear that the contract between the minor and the association is binding and cannot be set aside in the event the minor subsequently changes his mind during his minority, or within a reasonable time after reaching his majority and bring suit to recover the certificates or their value.

In support of our contention we call attention to the case of McCarty v. North River Saving Bank, 296 New York State at page 298, construing certain sections of the New York Banking Statutes and their legality in regard to the payment by a bank of a deposit to a minor. The court upheld the legality of the payment but had something to say about the responsibility of a bank which pays money to an infant of such tender years as to be non sui juris. At l.c. 299 the court said:

> "We think it was the intention of the legislature that subdivisions 1 and 2 of section 249 of the Banking Law, as they existed in 1928, should be read together so as to permit payment to be made to an infant by a savings bank of a trust deposit. The amendment of 1936 to subdivision 2 (chapter 561 of the Laws of 1936) merely clarified the existing law. Without passing upon the responsibility of a savings bank which pays money to an infant of such tender years as to be non sui juris, we find no proof in the present record that this infant lacked capacity

> to understand the transaction. Therefore, the bank was protected by the statute in giving the check to the plaintiff."

In view of the holding in this case and for the reasons given above, and also bearing in mind the restrictions and qualifications to which attention has been previously called our answer to the first inquiry is in the affirmative.

In considering the first part of the second inquiry, that when a minor presents his certificates of shares to an association and requests new ones to be issued in the name of a person other than the minor, or in the name of the minor and another person, if the association is authorized to comply with the request, we again call attention to Section 369.155, supra, and quote the following portion of same:

> "An association may issue membership certificates to minors. Such an account shall be held for the exclusive right and benefit of such minor, free from the control or lien of all persons.
> * * * *"

This is the only statutory authority for an association to issue certificates to minors, and it is silent as to the issuance of certificates to minors in the name of any other person or persons, or in the names of a minor and another person. Since the statute provides the minor's account is to be for his exclusive right and benefit, and free from the control or lien of all other persons, we understand it to mean that the certificates shall be issued only in the name of the minor depositor. In view of the provisions of the section quoted above, an association would be legally unauthorized and could not issue a certificate to a minor in the name of another person, or in the name of the minor and another person.

Therefore, our answer to the first part of the second inquiry is in the negative.

The second part of the second inquiry as to whether the minor can legally assign, transfer and deliver his certificate to another person, presents an entirely different situation than that presented in the former inquiries. By "any other person", as used in the last inquiry, we assume this to refer to someone other than the minor himself or the saving and loan association in which the minor holds a membership certificate.

Section 369.155, supra, makes the contract between a minor, and the association issuing the certificates to the minor binding, when but for this exception to the general rule, said contracts would be voidable at the minor's option. However, no provision

in this or any other section of the savings and loan statutes is found to the effect that contracts of assignment, transfer and delivery of a minor's certificates of shares in an association between the minor and "any other person" shall be valid, and not voidable by the minor. It is our thought that the general rule noted above fully applies to all contracts by which a minor assigns, transfers or delivers his savings and loan certificate to "any other person" and such contract would not be void, but voidable, if the minor chose to avoid it at any time during his minority, or within two years after reaching his majority.

Therefore, our answer to the second part of the second inquiry must be in the negative.

CONCLUSION

It is the opinion of this department that under the provisions of Sections 369.150 and 369.155, Laws of Missouri, 1953, page 227, that:

1) The agreement of a minor to surrender his certificates of shares in a savings and loan association, and upon payment to him of their cash value, to give his receipt therefor and release of liability to the association, is a valid contract in all those instances in which it clearly appears the minor fully understands the nature of the contract into which he enters. After having been fully executed by the parties thereto, said minor cannot subsequently avoid the contract during his minority, or within a reasonable time after reaching his majority and bring an action to recover the shares or their value.

2) A savings and loan association is legally unauthorized to reissue the certificates of a minor in the name of a person other than the minor, or in the names of the minor and that of another person.

3) The contract of a minor to assign, transfer anddeliver his certificates of shares in a savings and loan association to any party other than the association issuing the certificates is not legally binding upon the minor. Without regard to whether the contract is executed or executory, said minor may, at any time during his minority, or within a reasonable time after reaching his majority, avoid the contract and bring an action to recover the shares or their value.

Honorable Morris G. Gordon

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

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