BUILDING AND LOAN: Five shares required of directors may be full paid or installment shares. Directors having loans before Section 5593 went into effect do not have to liquidate same.

June 1, 1938

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FILED
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Mr. J.W. McCammon, Supervisor
Building and Loan Department
Jefferson City, Missouri

Dear Mr. McCammon:

This department is in receipt of your request for an official opinion which reads as follows:

> "Question No. 1: Must the five shares as provided in Section 5591, be owned outright, or can they be installment shares with amounts due on them?
>
> "Question No. 2: Section 5593 provides that no director of a building and loan association may borrow except on his private dwelling house. Supposing a director owed large sums to the building and loan on property other than his private dwelling house when this act was passed does this act require that particular director to liquidate his loans or may he continue as the debtor and director of the building and loan?"

We shall take your questions up in the order that you present them.

Section 5591, Laws of Missouri, 1931, page 147, provides in part as follows:

> "No person shall be eligible to become or shall continue a director unless he shall be the owner of at least five shares of capital stock of such corporation, and not delinquent in any manner thereon."

It is, perhaps, the paramount rule of statutory construction that a statute should be construed so as to ascertain and give effect to the legislative intent expressed therein. Thompson v. City of Lamar, 17 S.W. 2nd 960, State ex rel. American Corporation v. Trimble, 44 S.W. 2nd 1103, 329 Mo. 495.

Further, as was said in State ex rel. v. Imel, 242 Mo. 293: "In construing statutes, the meaning of a word or phrase may be ascertained by the meaning of other words and phrases with which it is associated".

It will be noted that Section 5591, supra, provides that a director must not only be the owner of at least five shares of capital stock, but that he also is "not delinquent in any manner thereon". Therefore, the legislature must have intended to include installment stock in the term "capital stock", because it is on this type and not the fully paid stock that a stockholder might be delinquent.

CONCLUSION

It is, therefore, the opinion of this department that a director, under Section 5591, Laws of Missouri, 1931, page 147, must be the owner of at least five shares of capital stock. Such shares may be installment shares, but payment thereon must not be delinquent in any manner.

Your second question deals with a director who had a loan from the association on property other than his private dwelling house, and the legislature, subsequent to the granting of the loan, passed a law saying that such loans could not be made to a director. Should the director then be required to liquidate the loan?

Section 5593, Laws of Missouri, 1935, provides in part as follows:

> "No real estate loan shall be made by an association 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 or stockholder 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."

That part of Section 5593, quoted above, is not found in the section as passed in 1933 (Laws of Missouri, 1933, page 182).

Acts of the legislature must be held to operate prospectively only. State ex rel. Harvey v. Wright, 251 Mo. 325.

The provision of Section 5593, supra, states that no real estate loan "shall be made" to any director. The context of the statute shows that the statute is to be prospective in its operation.

As was said in Minter v. Bradstreet Co., 174 Mo. 444: "The word 'shall' as used in a statute ordinarily applies to something to be done or to take place in the future".

There is another reason why the statute would apply only to loans made subsequent to the passage of the act. Article II, Section 15 of the Constitution of Missouri provides "That no ex post facto law nor law * * * retrospective in its operation * * * can be passed by the General Assembly".

All statutes are presumed constitutional (Graves v. Purcell, 85 S.W. 2nd 543), and a statute, if ambiguous, must be given a construction rendering it constitutional. (State ex rel. v. St. Louis, 2 S.W. 2nd 713.) To construe

Section 5593 as retrospective would be to render it unconstitutional. Therefore, such section must be given a construction which would make it constitutional, i.e., prospective in its operation.

CONCLUSION

In view of the above authorities, it is our opinion a director of a building and loan association who had obtained a loan, prior to the passage of Section 5593, Laws of Missouri, 1935, on a building other than his private dwelling house would not have to liquidate or pay such loan prior to its maturity.

Respectfully submitted,

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APPROVED By:

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