BUILDING AND LOAN: Association must follow reorganization plan even though it is expeditious to ignore same.

April 26, 1940

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Honorable J. W. McCammon, Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Sir:

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

> "Enclosed is copy of letter received from the United Savings and Loan Association (Merchants Savings and Loan Association) requesting supervisor's approval to modification of the reorganization plan, copy of which is herewith enclosed, approved by the Circuit Court of Jackson County.
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> "Section IV of the reorganization plan provides, in part, as follows:
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> "'When from time to time the said Class B Assets which have been converted and have been accepted and have been approved as Class A Assets by the Supervisor and the Corporation reach in total dollar value an amount equal to ten per centum of the aggregate of the Class B participating units originally issued, a reclassification of such approved and accepted assets and a readjustment of stock ownership and of Class B. Certificates shall be made in the following manner; * * * * * * * * * * .'

> "At this writing over two years have elapsed since the reorganization plan became effective and no partial dividend payment has been made. It would take about $7,400.00 to make the 10% distribution, based on the aggregate of the Class B participating units originally issued. The trustees now have approximately $5,400.00 available for such a distribution, desire to so distribute, and do not believe they will be able to accumulate $7,400.00 that would be available for distribution at an early date.
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> "Your counsel is requested as to whether or not the Supervisor has the authority without going into Court, to modify a specific method of procedure incorporated in the reorganization plan when, in the opinion of the Supervisor, the modification will inure to the benefit of the majority of beneficiaries of the Merchants Class B Assets Account."

As stated in your request, the reorganization plan became effective over two years ago and was, therefore, drawn up under authority of Section 5627, Laws of Missouri 1931, page 141, which provides in part as follows:

> "* * * * The supervisor may submit to the court any general plan of reorganization of such association or merger or consolidation of such association with another association, and the court may submit such plan to the stockholders for approval or disapproval, but no such action of the stockholders shall be binding on the court but be advisory only, and the court may approve or reject such plan of reorganization, merger,

or consolidation. * * * * * * "

While it is true that the 1939 Legislature amended Section 5627, supra, and gave the court much broader powers in the matter of a reorganization plan (Laws of Missouri 1939, page 257), still we look to the statute under which the organization plan was drawn up to determine any question relating to such plan. 12 C. J. S., page 542.

The Supreme Court of Missouri in State ex rel. Wagner v. Farm & Home Savings and Loan Association, 90 S. W. (2d) 93, 338 Mo. 313, said:

> "Building and loan associations are quasi-public financial institutions, and for the protection of them the State of Missouri has by the Act of 1931, provided special inquisitorial, supervisory and regulating laws which are specific, adequate, complete and therefore exclusive. * * * * * * * *
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> "* * * * we are not dealing with the reorganization of a purely private corporation, but we are considering a quasi-public financial institution. Therefore, the case of In re Doe Run Lead Company, 283 Mo. 646, 223 S. W. 600, and Section 5482, Revised Statutes 1929 (Mo. St. Ann., Section 5482, page 7871) are not in point." (The case and section cited above deal with the reorganization of private corporations.)

It will be seen from a reading of the statute that a court has authority to approve a plan of reorganization of a building and loan association, which plan is binding and one which the association must follow. Nowhere is the right given to ignore or to go contrary to the explicit order of the court in the reorganization plan. We, therefore, believe an association does not have the right to ignore or refuse to follow a reorganization plan which has been approved by a circuit court even though it is economically expeditious to so do.

CONCLUSION.

It is, therefore, the opinion of this department that a building and loan association which is operating under a reorganization plan approved by a circuit court has no authority to ignore or go contrary to the provisions of such plan.

Respectfully submitted

ARTHUR O'KEEFE
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APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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