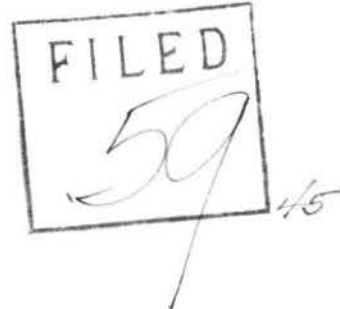


September 21, 1933.

9-25



Hon. Ira A. McBride
Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Mr. McBride:

On August 7th, 1933, we rendered an opinion which held:

"If the building and loan companies substitute or exchange their first mortgages or deeds of trust for bonds of Home Owners' Loan Corporation, it would be an indirect method of investing its money in such bonds, which the statute does not permit. It is our opinion that legislation will be necessary before bonds of Home Owners' Loan Corporation may be accepted by building and loan companies in lieu of their first mortgages or deeds of trust and until such time the companies may not accept the bonds in exchange."

Since this ruling, based upon the existing law, considerable interest has been manifested; so much so that His Excellency, the Governor, has given the assurance that in the Special Session to be shortly called he will, to the extent of his power, to promote President Roosevelt's National Recovery Program, urge changes to conform present State laws to that program. To do this means helping distressed home owners.

Reasonably assured, therefore, that legislation will be enacted permitting the acceptance of Home Owners' Loan Corporation bonds by building and loan associations on distressed loans, we advise that as a matter of policy to be pursued in the individual case, such bonds may be accepted according to the plan hereinafter set forth. We are placing this suggestion of acceptance as a determination of policy and not as a question of law.

In our opinion of August 7th we show that building and loan associations may invest their funds in several particular ways. We restate: first; on shares of stock owned by shareholders; second; on prime unencumbered real estate, third; to other building and loan associations, fourth; in lawfully issued obligations of the Land Bank of the State of Missouri, fifth; on bonds of the United States, sixth; bonds of the State of Missouri. However, due to the depressed condition in all lines of business during the past few years and the lack of employment of a large percentage of home owners, many mortgage loans have fallen in arrears, valuation of real estate has decreased and unpaid taxes have absorbed, in some cases, entire equities. In other instances, building and loan associations have been compelled to foreclose their loans with the result that the up-keep, insurance and taxes on such real estate have far exceeded the rental value derived from such property, which has added a great burden to associations. These costs might continue for some time and, if, and when, the property is sold a loss would be incurred. Therefore, to protect the shareholders of building and loan associations in this emergency and to help distressed home owners, we suggest that in each particular case where the home owner is distressed and the only means and method available whereby building and loan associations may compromise an existing liability, then such mortgages may be exchanged for bonds of the Home Owners' Loan Corporation. Thus, when bonds are exchanged, it will be a method of repayment of a loan by borrowing shareholders (Section 5601 Laws of Mo., 1931). Second, when building and loan associations by foreclosure have title to property by virtue of such, then said bonds may be accepted in exchange for the real estate thus acquired. (See Section 5600, Laws of Mo., 1931, p. 153.)

In no event shall these bonds be considered or acquired as an investment and if acquired such should be listed as "collections" or "compromise of an indebtedness" or "securities acquired by virtue of selling a liability", respectively, as the case may be. It should be your further policy that these bonds be disposed of at an early practicable date to the best advantage of building and loan companies. It is our understanding that the value of these bonds have greatly increased and will remain constant; that there is a market for them; and further, that such will be accepted as collateral for loans by Federal Reserve Banks and by Federal Home Loan Banks. We again remind

you that the principal of these bonds are not guaranteed, but the interest of four per cent is guaranteed for a period of eighteen years.

Before such bonds may be accepted a resolution must be adopted or the by-laws of building and loan associations changed to permit them to do the things suggested in this opinion. It will be your duty before these bonds may be accepted, in any event, to approve such by-laws or resolutions.

We list some of the advantages derived by permitting building and loan associations to accept these bonds:

- (1) By building and loan associations accepting these bonds, it will insure Missouri a greater, or at least its proportionate share of such allotted to it, as the associations own a majority of mortgages held in this State.
- (2) It will be advantageous to home owners who are borrowing shareholders or who have lost their homes by foreclosure.
- (3) Building and loan associations will be able to mitigate their losses on undersecured loans.
- (4) Building and loan associations may pay withdrawing shareholders with these bonds if such members will accept them.
- (5) The collateral feature for loans.
- (6) By using the bonds as a means to liquidate unmarketable assets (real estate).
- (7) It will take certain kind of real estate off the market, which at present has no sale value and thereby increase the value of remaining real estate.

It is our conclusion and opinion that you may promulgate a policy in accordance with the above and foregoing suggestions for such a period of time as required for the enactment of proper

legislation. We have in good faith relaxed our position on this matter, believing in the assurance given, the statutes will be changed in such manner as to conform with this opinion.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

JLH:EG