

BUILDING AND LOAN:

Person who pledged stock to association may not vote on any question which affects the claim the corporation has against such person.

11-24  
November 22, 1934.



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

Dear Mr. McBride:

This will acknowledge your letters of November 9th and 21st, 1934.

In your letter of November 9th you referred to this office a copy of a letter received by you from the Cottage Building and Loan Association, wherein the following question was asked:

"Our attention has been called to Section 4533 of the 1929 statutes which reads as follows:

'No person shall be admitted to vote on any shares of stock belonging or hypothecated to the corporation in which the election is held.'

"We do not feel that this applies to Building and Loans and would appreciate a ruling from your office or the Attorney-General whether or not this effects Building and Loans."

In your letter of November 21st you ask the following questions:

"First: Does a borrowing shareholder of a Missouri building and loan association who has pledged his stock as security for a loan, have a right to vote at the shareholders' meetings of the association:

"Second: On what basis can a Missouri building and loan association merge its assets with another institution?"

I.

Section 5593, Laws of Missouri, 1933, page 182, provides in part as follows:

"Any corporation heretofore organized or now existing under the laws of this state relating to 'mutual saving fund, building and loan associations,' and any corporation organized in pursuance of the provisions of this article shall have all the powers provided for in this article, \* \* \*."

In State ex rel. v. Brown, 68 S. W. (2d) 55, l. c. 59, the Supreme Court of Missouri, en banc, said:

"Measured by this standard the public policy of this state for more than forty years has been to place building and loan associations upon a different footing from that of corporations created under the general corporation laws of the state."

The Kansas City Court of Appeals in Appeal of Powell and Doyle, 93 Mo. App. 296, l. c. 300, said:

"\* \* \* The defendant is purely a creation of the statute, having only such powers as the statute gives and such as are necessarily implied."

Section 5590, Laws of Missouri, 1931, page 147, in part provides:

"The shareholders of such corporation may make and adopt all necessary by-laws for

the government of the affairs and business of the corporation, provided that the same shall not be inconsistent with the Constitution or laws of the state."

From the above statutes and decisions it is seen that building and loan associations are purely creatures of the statute and are governed by by-laws and the provisions of the statutes relating to building and loan associations. You have not informed us as to the provisions of the by-laws of the association relative to the matter you inquire, thus making it doubly difficult for us in writing an opinion on the subject. We call this to your attention because the by-laws of an association are an important part concerning and governing its activities. We call your attention to a few of the decisions on that matter.

In *Bertche v. Loan & Investment Association of Missouri*, 147 Mo. 343, l. c. 360, the Supreme Court of Missouri said:

"One who becomes a member of an association becomes chargeable with the knowledge of the provisions of its charter and by-laws and is bound by them. He cannot be ignorant of them, nor can he refuse obedience to them unless indeed they are illegal, and not requiring the performance of acts which the law forbids. By-laws not illegal, and not requiring the performance of acts contrary to law, must therefore be deemed binding upon all persons who become members."

In the case of *In Re Puget Sound Savings & Loan Associations*, 49 F. (2d) 922, the United States District Court said (l. c. 925):

"The shareholders are bound by the statutory provisions and by-laws not inconsistent with the statute."

Nowhere do we find that the statute permits a building and loan association to deal in its own stock, that is, own its own shares of stock. We do find, however, that a shareholder may pledge or hypothecate his stock to the association as security for a loan.

Corpus Juris, Vd. 9, page 954, Article 67, says the following:

"A building and loan association has no power to traffic in shares of its own stock, at least to the prejudice of its creditors."

Section 5612, Laws of Missouri, 1931, page 158, reads:

"No member of any corporation who has borrowed money from the same shall be allowed to vote on any question affecting the claim of such corporation against himself."

It is thus seen that the policy prescribed by the Legislature governing building and loan associations is similar to that prescribed for corporations by virtue of Section 4533, R. S. Mo. 1929. However, as far as building and loan associations are concerned the rule has been relaxed and permits a borrowing shareholder to vote on any question other than that which affects the claim the corporation has against him. Then the right of a borrowing shareholder to vote will be dependent upon the facts in each instant case, that is, whether his vote is on a matter affecting his claim the corporation has against himself.

In conclusion, it is our opinion that Section 4533, supra, does not apply to building and loan associations in the sense that that statute is read as part of the laws governing said associations. However, the effect of such statute does because (1) a building and loan association cannot own its own shares, and (2) because a borrowing shareholder would have no right to vote on a question affecting the claim the corporation has against him.

## II.

In answer to your second question, contained in your letter of November 21st, we advise that we have heretofore ruled

Hon. Ira A. McBride

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on this subject and refer you to our opinions to you, dated  
March 17, 1934, and June 25, 1934.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JLH:EG