

SAVINGS AND LOAN ASSOCIATIONS: Savings and Loan Association may mortgage, pledge or hypothecate assets as part of its power to borrow under Section 60 of House Bill 481.

April 30, 1943



Mr. J. C. Woodsmall
Chief Examiner
Division of Savings and Loan Supervision
State Office Building
Jefferson City, Missouri

Dear Mr. Woodsmall:

We hereby acknowledge receipt of your request for an opinion, which reads as follows:

"Since there is a question in the minds even of attorneys regarding the matter below quoted, we, as mere laymen, hesitate to venture our suggestion and, therefore, request your opinion.

"The borrowing institution is not a member of the Federal Home Loan Bank. While under House Bill No. 481 and the by-laws, the association has the power to borrow money from institutions other than the Federal Home Loan Bank, we did not find any express provision in either the by-laws or the House Bill involved permitting the mortgaging, pledging or hypothecation of assets to secure the money so borrowed. While from a reading of the by-laws and the Bill as a whole there is no doubt in our minds but what the right to borrow would imply the right to mortgage, pledge or hypothecate assets as security therefor, nevertheless, as a precautionary measure for the benefit of our client, we would very much appreciate an expression from you as to the right of an association to borrow within the limits as afforded under

House Bill No. 481 from an institution other than the Federal Home Loan Bank, and to mortgage, pledge or hypothecate, as the case may be, its assets as security therefor."

The applicable part of House Bill 481 is Section 60, wherein it is provided:

"Any association shall have power to borrow (a) if it is not a member of a Federal Home Loan Bank, not more than an aggregate amount equal to twenty-five per cent or (b) if it is a member of the Federal Home Loan Bank, not more than fifty per cent of its capital on date of application, or any date not more than thirty days prior thereto; provided that total borrowing from sources other than the Federal Home Loan Bank, if the association is a member of the bank, shall not exceed ten per cent of its capital."

Under this section, an association which is not a member of the Federal Home Loan Bank may not borrow more than an aggregate amount equal to twenty-five per cent of its capital on the date of application, or any date not more than thirty days prior thereto.

As to whether the association may mortgage, pledge, or hypothecate its assets as security therefor, we quote from the case of *Boerheide v. Johnston*, 81 Mo. App. 193, wherein it is held, 1. c. 199:

"This question has received thorough consideration of the courts in several states of this union as well as of England and from these adjudications we deduce the following conclusions: Prima facie there is nothing in the character of these associations which takes them out of the general rule which permits corporations generally to borrow money to carry out the purposes of their incorporation though such power is not expressly conferred

by the law creating them. 4 Am. and Eng. Ency. of Law (2 Ed.), p. 1022 and 1023; Elliot on Bldg. Ass'ns (2 Ed.), secs. 297-299; Thomp. on Bldg. Ass'ns (2 Ed.), secs. 297-299; Thomp. on Bldg. Ass'ns, sec. 277, and cases cited; Davis v. West Saratoga Bldg. Union, 32 Md. 285; Jackson v. Meyers, 45 Md. 452; Bldg. Ass'n v. Bank, 79 Wis. 51; Jones v. Bldg. Ass'n, 94 Pa. St. 215; Mohenshell v. Sav. & Loan Ass'n, 140 Mo. 566; Bailey v. Ins. Co., 73 Mo. 381 et seq.

"At first this power to borrow was denied in England but such power could be conferred by a rule to that effect in the charter, so held by the House of Lords. Murray v. Scott, L. R. 9 App. Cas. 538.

"In many states of the Union this power is expressly conferred by statute. In Missouri the statutes did not grant this power expressly prior to the act of April 20, 1895 (Laws of Mo., p. 114, sec. 17) which confers the power to borrow but limits it to temporary purposes not inconsistent with the objects of the organization and provides it shall have no longer duration than two years, and not to exceed at any one time the aggregate amount of the income from dues and interest for six months.

"That act of course does not affect this case.

"Our conclusion is that the power to borrow money for the purposes of its business was implied in building associations at the time this institution received its right to do business, that as a corollary to that power it might execute its note or obligation to the lender and assign the notes or bonds it held to secure lenders to it, and in case of its

insolvency it could lawfully assign all of its notes and other assets to its assignee selected by its board of directors to collect and distribute its assets to its creditors and stockholders. *Detweiler v. Breckenkamp*, 85 Mo. 45; *Callahan's Appeal*, 124 Pa. St. 136." (Underscoring ours.)

It is a well established principle of law that a building and loan association may exercise only such powers as are conferred upon it by the legislative body creating it, either by express terms or by necessary implication. 12 C.J.S. 456; 9 Am. Jur. 130.

Conclusion

It is the opinion of this department that under Section 60 of House Bill 481, building and loan associations are given the power to borrow money subject to the limitations specified therein, and incidental to that power to borrow is the power to mortgage, pledge or otherwise hypothecate their assets as security therefor.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. M. TAYLOR
Attorney General

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