

SAVINGS AND LOAN ASSOCIATIONS:
BOARD OF DIRECTORS' POWER:



A savings and loan association not prohibited under its by-laws or any Missouri statutes, may pay bonuses to employees or affiliates for obtaining new accounts. By-law of an association prohibiting payment of dividends upon accounts withdrawn can be amended to permit payment of dividends upon any portion of withdrawal between last dividend date and notice of withdrawal. Board of directors lack power under by-laws to create new office of chairman of board. Office cannot be created without amendment authorizing same.

June 24, 1953

Honorable Morris G. Gordon
Supervisor
Savings and Loan Supervision
Department of Business and
Administration
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads as follows:

"The following questions have been submitted to this Division for approval and we would greatly appreciate your opinion before we advise this association.

"Would the Division of Savings and Loan have any objection to the following contemplated changes in the operation of the association?

"(1) To pay bonuses to employees and affiliates for obtaining new savings accounts.

"(2) To amend the by-laws to pay dividends on partial withdrawals between dividend dates. --- By proper statutory procedure of course.

"(3) To create a new office of Chairman of the Board without amending the by-laws."

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The above inquiries appear to be general in nature and might properly refer to any or all savings and loan associations in the state. However, we do not believe that the writer intended to ask questions of this nature, but rather to ask questions referring to a particular savings and loan association of which he was thinking at the time said inquiries were made.

Our belief in this respect is confirmed by the fact that along with the opinion request, the writer enclosed a copy of the by-laws of a certain savings and loan association, and at least two of above three inquiries relate to the by-laws of this association, which for convenience, we shall refer to as A Savings and Loan Association.

Among the powers and duties conferred upon the board of directors of A Savings and Loan Association, are those to fix the compensation of directors, officers, and employees as provided by sub-section (c) of section 33, of the by-laws, which reads as follows:

"(c) To fix the compensation of directors, officers and employees; and to remove any officer or employee at any time with or without cause."

Above quoted portion appears to be the only provision of the by-laws dealing with the compensation of directors, officers, or employees, although the method of paying such compensation by salary, or in some other manner is not stated. This is not important, except that our remarks to follow will be more or less of a general nature and will be fully applicable to all types or classes of compensation paid employees.

The first inquiry is concerned with whether or not bonuses may be paid to employees and affiliates for obtaining new savings accounts, although no indication is made as to whom the word "affiliates," was meant to refer. From the subsequent clarification of the word by the writer, we understand that "affiliates" was intended to refer to office help, officers, and directors of the association.

In the case of Wellington v. Con. P. Curran Printing Co., 268 S. W. 396, it was held that a bonus contract was unilateral, and was not one based upon the mutual obligations of the employer and employee, and that an employee who had complied with the terms of his employer's offer was entitled to a bonus. At l. c. 398, the St. Louis Court of Appeals said:

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"The compliance with the terms of this offer of defendant created a contract supplementary to the contract of employment. It was an inducement to plaintiff to remain in the employ of defendant, and to perform efficient and faithful service. Plaintiff, who was employed by the week, was not obligated to remain throughout the year 1920, and it could be inferred from the facts in this record that he was induced to do so, in part at least, by the offer of reward made to him by defendant. This case does not come within that class of cases which hold that there can be no recovery where defendant gets no more service as the result of such a promise than it would had no such promise been made, because plaintiff here was not under a contract of employment for the entire year 1920, but was employed and paid by the week (according to defendant's own testimony), and for this reason the agreement could not be considered a nudum pactum. We think the great weight of authority supports the view that plaintiff, under such a state of facts as we have in this record, is entitled to recover the amount sued for. * * *"

Also, in the case of Building and Loan Association v. Barret et al., 160 Mo. App. 164, in discussing the authority of the officers and directors of a building and loan association, the Springfield Court of Appeals, at l. c. 180, said:

"The officers and directors of building and loan associations possess such powers as are granted by statute, charter and by-laws, and such as are inconsistent therewith which are necessary to the discharge of their several offices, but any substantial departure therefrom is ultra vires. Each of the officer's acts, in a way, as agent for the society and has power to bind it within the scope of the apparent authority which he possesses. (6 Cyc. 139) No citation of authorities is necessary to support these elementary principles."

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From the holding in the case of Wellington v. Con. P. Curran Printing Co., supra, bonus contracts between an employer and employee are legally enforceable.

We are unable to find any Missouri statutes or any provisions of the by-laws of a Savings and Loan Association which prohibits it from entering into bonus contracts with its employees and affiliates. Therefore, in view of the foregoing, and in answer to the first inquiry of the opinion request, it is our thought that said association may legally enter into such contracts with its employees and affiliates.

The second inquiry concerns the matter as to whether the by-laws of A savings and Loan Association may be amended so that the payment of dividends on partial withdrawals of accounts of shareholders may be made between (as we assume the regularly established) dividend dates.

Section 369.120, RSMo 1949, provides the procedure that shall be followed when the by-laws of a saving and loan association are to be amended, We are not concerned here with such method of procedure, but rather with the question as to whether or not the by-laws of the savings and loan association referred to in the instant case can be legally amended in the manner, and for the purpose mentioned above.

Section 369.230, RSMo 1949, provides when dividends shall be declared by the board of directors and reads as follows:

"As of June thirtieth and December thirty-first of each year the board of directors shall declare such dividend, if any, from the undivided profits account as the board shall deem advisable, taking into consideration existing conditions; provided, however, that any association which, upon the effective date of this chapter, had been closing its books and declaring dividends upon other semi-annual dates may continue to do so, with the consent of the supervisor."

Section 369.245, RSMo 1949, provides how dividends shall be computed and reads as follows:

"Except as otherwise provided in this chapter, dividends shall be calculated on the participation value of each account

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at the beginning of the dividend period, plus payments made thereon during the dividend period, less amounts withdrawn and notice for withdrawal, which for dividend purposes, shall be deducted from the latest previous payment thereon, computed at the dividend rate for the time invested, provided that no association shall be required to compute, credit or pay any dividend on any amount withdrawn during the dividend period."

Section 369.260, RSMo 1949, provides when an application for withdrawal of an account may be filed, and reads as follows:

"Any account holder may, at any time, present a written application for withdrawal of all or a stated amount of his accounts. Such application may be canceled or reduced at any time. An association shall pay or number, date and file in the order of actual receipt, every withdrawal application."

Section 369.270, RSMo 1949, gives the status of applicants for withdrawal of accounts, and reads as follows:

"An account holder who has filed written application for withdrawal shall remain such so long as his application remains on file and shall not become a creditor. Except with the approval of the supervisor, no dividends shall be declared upon that portion of an account which has been noticed for withdrawal, which, for dividend purposes, is to be deducted from the latest previous payment on such account, so long as such application is on file."

Section 21 of the by-laws of A Savings and Loan Association, gives the dates when dividends may be declared by the board of directors, and conforms to the dates provided by Section 369.230, supra.

Section 22 of the by-laws prohibits uncollected interest from being included as earnings from which dividends are to be paid.

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Section 23 of the by-laws provides how dividends are to be computed, and reads as follows:

"DIVIDENDS - HOW COMPUTED. Dividends shall be calculated on the participation value of each account at the beginning of the dividend period, plus payments made thereon during the dividend period (less amount withdrawn and noticed for withdrawal, which for dividend purposes shall be deducted from the latest previous payment thereon) computed at the dividend rate for the time invested; provided that no dividends will be computed, credited, or paid on any amount withdrawn during the dividend period."

Sections 21, 22 and 23, are all the by-laws relating to dividends.

Section 24 of said by-laws provides the procedure to be followed by the shareholders in the withdrawal and redemption of accounts, and reads as follows:

"WITHDRAWALS. Any account holder at any time may present a written application for withdrawal of all or a stated amount of his accounts, and may cancel or reduce the amount of such application at any time, if such application is not paid in full when presented, same shall be numbered, dated and filed in the actual order of receipt. Withdrawals shall be paid in the order of receipt, except (1) that the board of directors may pay upon any application not exceeding one hundred dollars to any one account holder, and (2) that payment of withdrawals shall be made on the rotation plan provided by the Savings and Loan Act of 1946 whenever the association does not pay in full each application which has been on file one full calendar month. The association shall not obligate itself to pay withdrawals on any other plan.

"Upon withdrawals the association shall pay from available funds under the Laws of Missouri the value of an account, as determined by the board, but not in excess

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of the participation value thereof. No dividends shall be declared upon that portion of an account which has been noticed for withdrawal which, for dividend purposes, is to be deducted from the latest previous payment on such account, so long as such an application is on file."

Section 25, prohibits the association from charging any withdrawal fees, and Sections 24 and 25 are the only by-laws relating to withdrawals. The amendments to the by-laws of A Savings and Loan Association referred to in the opinion request apparently was meant to refer to Section 23, supra. Section 369.230, supra, allows the board of directors of a savings and loan association to declare dividends on shares of stock as of June 30th and December 31st each year, and these are the only dates when dividends may be declared, except when the state supervisor of savings and loan grants permission to an association to declare dividends on some other dates. It appears that A Savings and Loan Association has not been granted special permission and any dividends which may be declared by it must be on the dates provided the above mentioned section of the statutes, and Section 21, supra, of the by-laws.

Section 369.270, supra, prohibits the payment of dividends upon any portion of an account noticed for withdrawals, except with the permission of the supervisor. It appears that A Saving and Loan Association has not been granted that permission, and under the provisions of said section, it cannot pay dividends on any part of an account noticed for withdrawal.

Section 369.245, supra, is the only provision of the Savings and Loan Act which appears in any manner to restrict the crediting or payment of dividends upon accounts withdrawn. The pertinent part of that section reads as follows, "* * *that no association shall be required to compute, credit or pay any dividend or any amount withdrawn during the dividend period."

From the foregoing, we reach the conclusion that under the provisions of Sections 369.230, 369.245, 369.270, supra, and Sections 21 to 25 inclusive, of the by-laws of A Savings and Loan Association, said association is empowered to declare dividends as of June 30th and December 31st each year, and that it cannot pay dividends upon any portion of an account noticed for withdrawal. While we construe Section 369.245, supra, as being directory, and does not require an association to declare or pay dividends upon accounts withdrawn during the dividend period, it

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does not prohibit the payment of such dividends during said periods. Unless the by laws of an association prohibit the payment of dividends upon withdrawals in whole or in part between dividend dates, it appears that associations might lawfully pay such dividends upon whole or partial withdrawals from the date of the last dividend payment to that of the notice of withdrawal. However, in the instant case, Section 23 of the by-laws of A Savings and Loan Association prohibits it from paying dividends upon any portion of an account withdrawn during the dividend period. Said Association cannot make the dividend payments in the manner suggested in the second inquiry as long as Section 23, supra, of its by-laws is in effect.

In answer to the second inquiry, it is our thought that Section 23 of by-laws of A Savings and Loan Association can be amended to permit the payment of dividends upon partial withdrawals between dividend dates.

Section 369.190, RSMo 1949, gives the qualifications of the directors of a savings and loan association, and reads as follows:

"No member shall be eligible to become or continue as a director unless he shall hold an account with net participation value of at least five hundred dollars. The number, title functions, and qualifications of officers shall be provided by the bylaws. Each officer shall serve at the pleasure of the board."

(Underscoring ours.)

Section 43 of the by-laws of A Savings and Loan Association provide what officers of the board of directors there shall be, and Section 44, gives the terms of each such officer.

Section 44, reads as follows:

"TERMS OF OFFICE. All officers shall be elected or appointed by the board of directors to serve at the pleasure of the board. Such elections and appointments shall take place at a board meeting to be held immediately after each annual members' meeting."

Sections 45, 46, 47 and 48, of said by-laws set out the duties and powers of president, vice-president, secretary, and

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treasurer of the board of directors respectively.

Section 45, reads as follows:

"PRESIDENT'S DUTIES AND POWERS. The President shall preside at all meetings of the members and the board of directors and in the absence of designation from time to time of powers and duties by the board of directors, he shall have such powers and duties as generally pertain to the office of president."

Section 46, reads as follows:

"VICE-PRESIDENT'S DUTIES AND POWERS. The vice-president shall perform all the duties of the president during his absence or disability and shall have such other powers and duties as shall from time to time be conferred upon him, or prescribed by the board of directors, or the executive committee."

Section 47, reads as follows:

"SECRETARY'S DUTIES AND POWERS. In the absence of designation from time to time of powers and duties by the board of directors, the secretary shall have such powers and duties as generally pertain to the office of secretary or manager."

Section 48, reads as follows:

"TREASURER'S DUTIES AND POWERS. The treasurer, if any, shall perform duties as shall be required of him by the board or the executive committee."

The above quoted sections of the by-laws name every officer of the A Savings and Loan Association, and prescribe the duties of each. Section 43, grants the board power to "elect or appoint such additional officers and employees as it may, from time to time determine," and at first thought this would seem to be sufficient authority for the creation of the new office of chairman, referred to in inquiry number three of the opinion request. The functions and qualifications of the office of chairman have not been given,

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and we have no method by which to determine exactly what the writer of the opinion request had in mind from the brief reference made in the third inquiry to the office of chairman of the board. However, it is assumed that the duties of such new office would be those characteristic to a chairman of any other organization.

The word "chairman" is defined by Websters New International Dictionary, as follows: "The occupant of a chair or office or authority; specif., the presiding officer of a committee, meeting, or any organized body."

From this definition, and the few facts given in the opinion request, the apparent reason for creating the office of chairman would be to have that officer preside over the meetings of the members of the board although the necessity for the creation of such office does not appear.

Section 45 of the by-laws specifically provide that it is the duty of the president to preside over all meetings of the members and board of directors, and it seems that the general duties of the proposed new office would be the same as those now performed by the president.

In the event such office was created and one elected or appointed chairman, under authority of Section 43 of the by-laws, then the board of directors would find itself in the embarrassing position of having two presiding officers of its meetings, whose powers, and duties in this respect would be the same. It is believed that the board did not intend for such an absurd situation to ever occur, yet, if it were to be assumed that the board had authority under Section 43, supra, to create the office, and to appoint or elect one of their members as chairman, such an unhappy situation would be the result.

Therefore, it is our thought that the board of directors lacks the power, and has no authority under Section 43 of the by-laws to create the office of chairman, so long as Section 45 of the by-laws defining the office of president and the duties of same, remains in effect, for the board has no power to appoint or elect two different officers to perform the same duties, and particularly those who are to preside over the member or board meetings.

It is our further thought that the only method by which the board may legally create the office of chairman is by a proper amendment of Section 45, of the by-laws, or by repealing

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this section and enacting a new section which creates the office of chairman of the board, and prescribes his duties.

CONCLUSION

It is therefore the opinion of this department that:

(1) A savings and loan association may legally enter into an agreement to pay bonuses to its employees for obtaining new savings accounts.

(2) A savings and loan association by-laws prohibiting the payment of dividends upon accounts withdrawn during dividend periods can be amended to permit such payments.

(3) The board of directors of a particular savings and loan association which lacks the power under its existing by-laws to create the office of chairman of the board of directors, cannot create such office without an amendment to said existing by-laws authorizing the creation of said office and defining the duties of same.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON

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