

BUILDING & LOAN: Supervisor does not have right to remove officers of associations because of inefficiency or incompetency, nor the right to force a merger.

December 1, 1938

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Hon. J.W. McCammon
Supervisor, Bureau of
Building & Loan Supervision
Jefferson City, Missouri

Dear Mr. McCammon:

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

"In view of the fact that this Bureau's program calls for rehabilitation of several Kansas City building and loan associations which we hope can be put into effect with federal insurance of shares without receivership, I will greatly appreciate legal advice in written form, so that we may make it a part of our files, on the following questions:

"1. In the event that this Bureau, in cooperation with the Federal Insurance Corporation, should be of the opinion that the interests of shareholders would be better protected by a change in the personnel of any building and loan association, how much legal authority does this Bureau have--if any--to bring about the removal of a president or a secretary or any other officers for the purpose of substituting a more efficient man or men to fill the vacancy or vacancies? Of course, in receivership we understand that we would have much more latitude, but I am basing this question on the theory that we are trying to bring about a reorganization without receivership.

"2. If, in the opinion of this Bureau and representatives of the Federal Insurance Corporation, the merger of two or more associations--not in receivership--would be beneficial to the interests of shareholders, what legal authority--if any--does this Bureau have to put such merger into effect? Would it or would it not be a matter of whether we could or could not persuade the officers of the several associations, which we might believe should enter into the merger, to agree to our merger plan? Inasmuch as the merger of two or more associations would automatically reduce the number of paid executives, we assume that there would be opposition to any merger plan and what power, under the law, would we have to overcome such opposition and to select the man this Bureau and the Insurance Corporation might deem best from an efficiency viewpoint for retention in the new organization?

"3. What legal authority--if any--does this Bureau have to remove a president, a secretary, or other officer of any building and loan association in the interest of making possible more efficient management provided that such officer or officers be not charged with any illegal action but might, in our opinion, be merely lacking in efficiency?

"Of course, I fully understand that if we were to take any association or any group of associations into receivership, this Bureau would then have the way cleared for presenting to the circuit court for judicial approval any reorganization plan we might deem proper. But, all of the questions I

have herein propounded are based on the hope and expectation that we may, if at all possible, bring about necessary rehabilitation and reorganization in several instances without receivership."

Your questions epitomized are: (1) Does the Supervisor of the Bureau of Building and Loan Supervision of Missouri have the right to remove any officer of a building and loan association on the ground that the officer is inefficient or lacks the business ability which the Supervisor deems necessary for a proper continuance of the association? (2) Does the Supervisor have any power by which he may force two or more associations to merge for the betterment of said associations without putting one or all associations into receivership?

It is a fundamental principle that "building and loan associations are creatures of statute and have very few if any common law powers and the statute that creates them must be strictly followed so far as it provides for their existence, powers, rights and liabilities." Sundheim on Building and Loan Associations, Third Edition, page 74. 9 Am. Juris Prudence, 101, 12 C.J.S. 400.

The Courts of Missouri have gone even further and have held that:

"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." State ex rel. Wagner vs. Farm and Home Savings & Loan Association, 90 S.W. (2) 93.

Therefore, we must look to the Building and Loan Statutes to determine whether the Supervisor has the right or power to do the things mentioned in your request. A close reading of the building and loan statutes of Missouri discloses no enactment which states, even by reference, that the Building and Loan Supervisor has the right to remove an officer from an association on account of incompetency or inefficiency.

While an officer may be removed for failure to be the owner of at least five shares of capital stock as is required by Section 5591, Laws of Missouri 1931, p. 147, still Missouri has no statute which provides that an officer or director of a building and loan association may be removed by the Supervisor for just cause. (Confer. Shaw vs. Hinton, (Tex.) 31 S.W. (2d) 478.

Therefore, since the statutes do not provide for such a procedure and since our Supreme Court has held that the Building and Loan Act is exclusive as to the rights and powers of associations, then we hold that you as Supervisor do not have any right or power to remove an officer because of inefficiency or incompetency.

In passing, however, it might be noted that even if our statutes were not exclusive and complete still such power would not be vested in you. It has been held that where no provisions are made relating to building and loan associations the general principles of law and equity will prevail. 9 Am. Juris Prudence 102.

Fletcher in his excellent work on Corporations, Volume 2, page 120, states:

"The authorities are well nigh universal to the proposition that the public has no legal interest in the question of suspension or removal of officers of private business corporations unless a public wrong is being committed or some fundamental principle or public policy violated. The only remedy is by private action instituted by the party or parties aggrieved."

In regard to your second question Section 5611, Laws of Missouri 1931, page 157, provides that any two or more corporations "with the approval of the Supervisor of building and loan associations previously had in writing", may merge

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if agreed to by three-fourths of the members of each body present at a meeting. Under the above statute the two associations may merge and a prerequisite is the approval of the Supervisor. However, in the absence of receivership we can see no power vested in the Supervisor in any way to bring such merger about. While we do not mean to infer that the Supervisor may not work with the directors and shareholders of the two associations in order to bring about a successful and amicable agreement, still the statutes do not vest any dictatorial power in him to force such a merger.

CONCLUSION

It is therefore the opinion of this Department that the Supervisor of the Bureau of Building and Loan Supervision has no right to remove an officer of a building and loan association because of inefficiency or incompetency. It is further the opinion of this Department that the Supervisor cannot force two associations to merge although he may render advice and aid in bringing about such merger.

Respectfully submitted,

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APPROVED:

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