

BUILDING AND LOAN:

Association which is member of Home
Loan Bank cannot borrow in excess of
ten per cent from an outside source.

February 24, 1940

Honorable J. W. McCammon, Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Mr. McCammon:

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

"The 1939 General Assembly revised
Section 5607 of the Missouri Statutes
relating to the methods by which a
building and loan association may
borrow funds. Prior to the revision
of Section 5607 no state chartered
building and loan association could
borrow in excess of, at any one time,
an amount equal to 10% of its assets
as shown by its last previous semi-
annual statement submitted to the
Supervisor. In the event of an
emergency, however, the Supervisor
could permit an association to bor-
row an amount not to exceed 25% of
the associations total assets as
shown by its last report to this
office.

"After a careful reading of Section
5607, Laws of Missouri, 1939, page
263, I find the methods and extent
by which an association may borrow
funds has been substantially changed.
My question, therefore, is whether
or not the Supervisor can authorize
a state chartered building and loan
association, which is a member of
the Federal Home Loan Bank, to bor-

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row in excess of 10% of its capital from a source other than the Federal Home Loan Bank of Des Moines, in the event he deems an emergency exists, and in the further event that the rules and regulations of the Federal Home Loan Bank of Des Moines are such as to be unsatisfactory to the association so desiring to borrow funds?"

Section 5607, Laws of Missouri 1939, page 257, provides as follows:

"Any such association heretofore or hereafter organized in this state shall have the power, if provided by its by-laws, to borrow, (a) if it is not a member of the Federal Home Loan Bank, not more than an aggregate amount equal to twenty-five per cent, or (b) if it is a member of such Bank, not more than an aggregate amount equal to fifty per cent, of its capital (as herein-after defined) on date of application or any date not more than thirty days prior thereto and within such amount equal to fifty per cent of its capital, such association may borrow from sources other than such Federal Home Loan Bank an aggregate amount not in excess of ten per cent of its capital; and no note or obligation for money borrowed from any source other than the Federal Home Loan Bank shall be given for a period of more than two years. Any such association shall have the power, if provided by its by-laws (a) to subscribe for and purchase stock of, and obtain and continue membership in, the Federal Home Loan Bank and comply with the provisions of the Act of

Congress known as the 'Federal Home Loan Bank Act' and assume all the duties and obligations and liabilities and become entitled to all the benefits provided in such Act, and (b) to obtain advances or loans from such Bank for such length of time and upon such terms as may be required or permitted by such Act, and do any and all things necessary or incident thereto,--including the power to secure such loans or advances by the pledge, assignment and transfer of any notes, bonds, obligations, mortgages and deeds of trust, whether given by members or non-members, and by the repledge of the shares of borrowing members pledged to such association as security for the payment of any notes, bonds or obligations so pledged, assigned or transferred to such Bank,--and (c) to invest in the obligations, bonds, debentures or other securities of said Federal Home Loan Bank and of the Federal Savings and Loan Insurance Corporation, and aggregate amount of its funds not in excess of ten per cent of its capital. 'Capital' as used herein means the aggregate of (a) amounts credited as dues and dividends upon the stock, shares or accounts of members and of (b) amounts of any profits undistributed but reserved for the maturity of and apportionable to particular stock, shares or accounts, less payments to members in the maturing, redemption, withdrawal and repurchase thereof."

As stated in your request, Section 5607, prior to its amendment in 1939, provided that in case of an emergency the supervisor could authorize the association

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to borrow an amount not in excess of twenty-five per cent of its assets. This provision was omitted from the 1939 amendment.

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

The 1939 law is unambiguous and nowhere provides that an association may borrow up to twenty-five per cent of its assets in case of an emergency. While the earlier law did so provide, still "we must proceed upon the theory that the Legislature intended something by the amendment." Holt v. Rea, 52 S. W. (2d) 877, 330 Mo. 1237. Therefore, the Legislature, in omitting such grant of power from the later statute, must have intended to withhold such right from a building and loan association. 59 C. J. 1097.

CONCLUSION.

It is, therefore, the opinion of this department that since the amendment of Section 5607, by the Laws of Missouri 1939, page 257, a state chartered building and loan association which is a member of the Federal Home Loan Bank cannot borrow in excess of ten per cent of its capital from a source other than the Federal Home Loan Bank.

Respectfully submitted

ARTHUR O'KEEFE
Assistant Attorney General

APPROVED:

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