

BUILDING AND LOAN: Possession of stock certificate must be given to association by borrowing member.

October 27, 1941

19-30

Mr. T. Victor Jeffries  
Supervisor  
Bureau of Building and Loan Supervision  
Jefferson City, Missouri



Dear Sir:

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

"I am enclosing a letter and blank share loan note from Mr. Lewis Luster, Attorney and Counselor for the Great Southern Savings and Loan Association, Springfield, Missouri, giving as his opinion that the Stock Certificate held as collateral by the Association does not have to be assigned to the Association, for the reason that the Stock Certificate is embodied in the face of the note.

"You will note that the note reads in part, 'to secure the amount borrowed, as indicated by the foregoing obligation, the undersigned hereby assign \_\_\_\_\_ and pledge \_\_\_\_\_ certificate of stock No. \_\_\_\_\_ for \_\_\_\_\_ Shares.

"It is the opinion of your examiner that the certificate should be assigned to the Association. I would appreciate it if you would obtain a ruling from the Attorney General on this matter, and send a copy of the ruling to the Great Southern and I too would like to have a copy.

(Signed) F. A. DAVIS  
Examiner."

The question presented is whether the stock certificate must be handed over to the association by a member when a stock loan is made to such member.

Building and loan associations are purely creatures of statute. 8 Am. Jur. 98. As was said by our Supreme Court in State ex rel. Wagner v. Farm & Home Savings and Loan Ass'n., 90 S. W. (2d) 93,

"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."

We must therefore look to the statutes of Missouri, which deal with building and loan associations, for the answer to your question.

Section 8216, R. S. Mo. 1939, provides in part as follows:

"For every loan or advance made to a member as aforesaid, a nonnegotiable note or bond secured by first mortgage or deed of trust on real estate shall be given, accompanied by a transfer and pledge of the shares of stock of the member or members so obtaining a loan or advance. Said shares so transferred and pledged shall be held by the corporation as additional or collateral security for the performance of the agreements, covenants and conditions of said note or bond and mortgage or deed of trust. \* \* \* \*"

Under the above statute every loan must be accompanied by a "transfer and pledge" of stock. It is the fundamental rule of statutory construction that the court shall

give effect to the intention or purpose of the Legislature as expressed in the statute. State v. Toombs, 25 S. W. (2d) 101; Thompson v. Lamar, 17 S. W. (2d) 960, 322 Mo. 514. The word "transfer" in Section 8216, supra, is not used in the sense of a "conveyance," because the Legislature in joining it with the word "pledge" did not mean for title to pass because a pledge is merely a transfer of the possession of personal property and not of the title. A. A. B. v. French, 279 S. W. 435; Conway v. Plough, 231 S. W. 1045. Rather, we think, that the word "transfer" should be used as in Carter v. Butler, 264 Mo. 306, in that "the word 'transfer' implies delivery of possession." It is further ruled in Missouri that a pledge of personal property must be accompanied by either the actual or constructive delivery of possession of pledged property to the pledgee. National Bank of Commerce v. Flannigan Mills Co., 268 Mo. 547; Miners Bank v. Aylor, 264 S. W. 99.

In view of the above authorities we are of the opinion that when a building and loan association makes a stock loan to a member, that the borrowing member must deliver possession of the stock certificate to the association.

#### Conclusion

It is, therefore, the opinion of this Department that when a stock loan is made by a building and loan association under Section 8216, R. S. Mo. 1939, that the actual possession of the stock certificate or shares of stock must be given to the association by the borrowing member.

Respectfully submitted,

ARTHUR O'KEEFE  
Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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