Building and Loan Associations—Consolidation—Stockholders.

Two or more building and loan associations may not consolidate under the laws of this state, except pursuant to an agreement on the part of all of the stockholders in each company.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

You have requested my opinion as to whether there is a method under the laws of this state for consolidating building and loan associations.

I find no express statutory provision authorizing the consolidation of building and loan associations. Neither do I find any statutory authority for one company to take over the assets and liabilities of another company.

Section 6355, R. C. M. 1921, in treating of building and loan associations, provides in part as follows:

> "Such associations shall be organized under the laws of this state relating to corporations, and shall be conducted under the banking laws of Montana, so far as applicable, except as otherwise provided in this Act."

I do not believe, however, that this section authorizes the consolidation of building and loan associations under the banking laws, and neither do I believe that the laws relating to corporations, generally, concerning the taking over by one corporation of the assets and liabilities of another, apply to building and loan associations.

It is not unlawful, however, for two or more associations to consolidate, provided the rights of stockholders are not prejudiced. The rule is stated in 9 C. J. 997 as follows:

> "While a consolidation of two building and loan associations, or an agreement whereby one purchases the assets or assumes the business of another, is not unlawful, and may be attacked only by the stockholders of the association which is being absorbed, the courts will not allow the rights of stockholders, either individually or collectively, to be prejudiced thereby."

I believe, however, that any agreement tending to the consolidation of two or more companies must have the assent of each and every stockholder of the companies affected, and that any stockholder not agreeing to such a consolidation may question the ultra vires character of the agreement and attempted consolidation.

In the case of Palmer v. Bosley, 62 S. W. 195, the Court had under consideration an agreement whereby one building and loan association assumed the business of the other. The Court, in discussing the validity of the agreement in question, said:

> "There was nothing in the arrangement made that was characteristic of a trust or unlawful combination. There was not an undertaking on the part of one company to own and control the stock of another. There was not a consolidation of two companies, but the agreement, in effect, was that the Southern, so far as the stockholders and borrowers in the Hermitage were willing, should assume the business of the latter. In this there was nothing unlawful that we can see. But, even if the contract between the two companies had been ultra vires, the case is not here so presented as to raise this question."

The case of Continental Nat. Building & Loan Ass'n v. Miller, (Fla.), 33 So. 404, is illustrative of the right of the minority stockholders to question any such agreement.

It is, therefore, my opinion that two or more building and loan associations may not consolidate under the laws of this state, except pursuant to an agreement on the part of all of the stockholders in each company.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.