

Building and Loan Associations—Capital—Superintendent of Banks—Certificates.

Under section 6, chapter 57, laws of 1927, a building and loan association is authorized to commence business when 5% of the authorized capital stock has been subscribed and not less than \$2,500 paid in cash.

It is the duty of the superintendent of banks to issue the certificate when the association has complied with this requirement, together with the other things required by the statute.

G. M. Robertson, Esq.,
Chief Examiner
Department of Banking,
Helena, Montana.

May 23, 1929.

My dear Mr. Robertson:

You have requested an opinion whether under Section 6 of Chapter 57, Laws of 1927, you are authorized to grant a certificate to a building and loan association authorizing it to commence business when 5% of the authorized capital stock has been subscribed and \$2,500 paid in in cash, or whether you must require that 5% of the authorized capital be paid in cash before issuing said certificate.

Said Section 6, as it now appears, provides that an organization may be completed and business commenced when 5% of the authorized capital stock has been subscribed and not less than \$2,500 paid in in cash, and such amount must thereafter be maintained. The same section further provides that the superintendent of banks shall issue his certificate to the association when he is satisfied, among other things, that 5% of the authorized capital has actually been paid in cash upon the subscription of shares. This presents a conflict as to when a building and loan association may commence to do business.

The history of said Chapter 57 shows that Section 6 of the original bill introduced in the legislature provided that the association might commence business when 5% of its capital stock had been subscribed and paid in cash, and the provision relating to the issuing of the certificate by the superintendent of banks was the same as it appears now in said Section 6 of Chapter 57.

In the original bill, therefore, there was no conflict between these two provisions as both required as a condition precedent to the commencement of business and the issuance of the certificate by the superintendent of banks that 5% of the authorized stock be subscribed and paid in in cash. During the course of the bill in the legislature said Section 6 was amended to provide as it now reads, that is, that the organization may be completed and business commenced when 5% of the authorized capital stock is subscribed and not less than \$2,500 paid in in cash, but the other part of the section relating to the issuance of the certificate by the superintendent of banks was not amended to conform to the requirement of subscription and payment as modified by the amendment.

Prior to the enactment of Chapter 57, the law permitted building and loan associations to commence business and authorized the superintendent to issue his certificate when 5% of the authorized capital stock had been subscribed. There was no requirement that any part of it be paid in cash. This fact, together with the legislative history of Chapter 57, as above explained, shows, in my opinion, that the legislature intended by said Section 6 of Chapter 57 to impose an additional requirement upon building and loan associations before they could commence business, to-wit, that \$2,500 must be paid in cash upon the subscriptions to the authorized capital stock, and to require such associations to maintain this amount paid in. The conflict as now existing in Section 6 of Chapter 57 is due to the fact that the legislature failed to amend the provisions of said Section 6 of Chapter 57, relating to the issuance of certificates by the superintendent of banks to conform with the amendment that was made relating to what amount must be paid in cash upon the subscriptions to the authorized capital stock. This was evidently an oversight.

The intention of the legislature is to be ascertained and given effect and where there is a conflict as in htis case so as to render the provisions of the act uncertain and the intention of the legislature difficult of ascertainment, the legislative history of the act may be referred to as an aid to construction of the act. By doing so and taking into consideration the prior legislation upon the subject it appears to me that it was the intention of the legislature to authorize the commencement of business by building and loan associations when 5% of the capital stock has been subscribed, and not less than \$2,500 has been paid in cash, and that you are authorized to issue your certificate when you are satisfied this has been done, provided the other things required by the statute have been complied with by the association.

By making the amendment to the original bill as aforesaid the legislature evidently was not willing to enact that 5% of the capital stock had to be paid in cash before commencement of business, but it was satisfied that \$2,500 was all that should be required and modified the original bill accordingly. The subsequent provision upon the subject

was overlooked and was left as it was in the original bill. The intent is evidenced by the fact of amendment in this particular, and should govern.

Very truly yours,

L. A. FOOT,

Attorney General.

By L. V. Ketter, First Assistant.