

**Building and Loan Associations—By-Laws—Dividends—
Payment.**

A building and loan association may not adopt a by-law by which dividends when declared are not distributed to the stockholders but are placed in a new fund not recognized in the statute, namely, a deferred dividend fund, the said dividends to be held in that fund for the purpose of paying losses which might accrue within some stated future period of time but which had not accrued at the time of the declaration of the dividends.

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Gentlemen:

I have your request for an opinion concerning the legality of pro-

posed by-laws of a building and loan association, copy of which you have sent me.

My understanding of the building and loan laws concerning the subject of the proposed by-laws is that losses are to be paid from the contingent fund which may be augmented by the reserve fund when the contingent fund becomes exhausted. When the losses exceed the contingent and reserve funds the stockholders are assessed pro rata for the losses but not to exceed in extent their stock credits in the association.

Under the proposed by-laws when the events mentioned therein occur the dividends when declared are not distributed to the stockholders but are placed in a new fund not recognized in the statute, namely, a deferred dividend fund, and these earnings may be held in said fund for a period of three years for the purpose of paying all losses which might accrue within said period but which had not occurred at the time of the declaration of the dividends but it was recognized might occur thereafter, and if said losses did occur, then so much as is necessary to cover said losses would be transferred from said deferred dividend fund to the contingent fund and only the balance remaining, if any, would be distributed to the shareholders.

It seems to me that this would have the effect of changing the scheme provided by statute for the payment of losses for whereas the statute contemplates that losses shall be paid from the contingent fund augmented by the reserve fund the proposed by-laws would make said losses payable from declared but undistributed dividends, leaving, possibly, the entire contingent and reserve funds free from the burden of paying these losses.

The purpose of the contingent fund is to cover losses when and as they might occur and of course that fund covers probable or possible losses which have not at the time the funds are credited to it been ascertained. It seems, therefore, that the contingent fund is raised for the identical purpose mentioned in the proposed by-laws and the legislature having knowledge that losses would from time to time occur dealt with the situation by providing for the payment of the losses from the contingent and reserve funds, and apparently this was the full extent that the legislature deemed it sufficient to provide against such losses.

Under the proposed by-laws dividends could be declared but not be paid or credited for a period of three years from the time they were declared. I think that the law contemplates that dividends must be both declared and distributed semi-annually.

Subdivision 17 of section 12 of chapter 57 of the laws of the twentieth legislative assembly as amended by chapter 163 of the laws of 1929 provides for the annual or semi-annual distribution of earnings while chapter 167 of the laws of 1931 provides that dividends shall be declared semi-annually and be paid or credited to the stockholders "at such time and in such manner as provided in the constitution and by-laws." The above quoted part, in my opinion, does not change the fact that there must be a semi-annual distribution of the earnings in pursuance of a semi-annual declaration of dividend, but has reference only to the semi-annual date on which the dividend will be paid or credited

which may be left to the association to determine but, nevertheless, in my opinion, it must be a semi-annual date of distribution.

In my opinion, the provision of chapter 167 declaring that dividends shall be declared semi-annually, taken in connection with said subsection 17, above referred to, means that there must be a declaration and distribution of dividends semi-annually and that the annual distribution mentioned in said subdivision 17 had relation to the state of the law before the enactment of said chapter 167 of the laws of 1931 when dividends could be declared and distributed either annually or semi-annually in the discretion of the association. If declared annually the distribution was annually; if declared semi-annually the distribution was semi-annually.

Subdivision 8 of said chapter 163, laws of 1929, authorizes members to withdraw after giving thirty days' notice and a withdrawing member is entitled to receive, among other things, "all dividends declared" and no fine of any description shall be made upon the declared dividends because of such withdrawal. This provision seems to indicate to me that a withdrawing member is entitled to receive the dividends declared which are attributable to his stock, and that he is not to be deprived of them because of his withdrawal. Under the proposed by-laws if a member withdrew after a dividend had been declared and set over into the deferred dividend fund he would not be entitled to his share of the dividend declared but would forfeit it to the association. This seems to be contrary to the statute.

Again, there seems to be an inconsistency between sections 1 and 2 of the proposed by-laws in that section 1 provides that the deferred dividend fund, after the emergency has passed, shall be distributed to the stockholders who have not withdrawn and who were stockholders of record at the time the dividend was declared, whereas, section 2 provides that only that part of said fund which is not needed to pay losses will be paid to the said stockholders.

In view of the fact that the superintendent of banks had a copy of these proposed by-laws and discussed the same with me a few days ago, I am sending to him a copy of this opinion.

Very truly yours,

L. A. FOOT,
Attorney General.