

Opinion No. 461.**Building and Loan Associations—Withdrawals—Payment of Before New Loans.**

HELD: A building and loan association, on withdrawal notice, may not use cash collection to make new loans before meeting all demands of members for withdrawal.

February 16, 1934

You have submitted the following question: "Can an association that is on withdrawal notice make loans from the funds collected?"

Section 12, Chapter 57 of the Laws of 1927, as amended by Chapter 11, Laws of 1933, reads in part:

"Every building and loan association is a creature of the law having certain powers and duties of a natural person and as such has power: * * *

"(8) To permit members to withdraw all or part of their stock credits at such times and upon such terms, as the constitution and by-laws may provide; provided * * *. Applications for withdrawals are to be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of the matured stock and of the withdrawals in the order registered; provided, however, that the other half of such collections each month may be used for the payment of withdrawals other than in the order registered, but no member shall receive more than one hundred dollars (\$100.00) in any one month other

than by payment of an application for withdrawal in the order registered. The term "Outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges."

The statute uses the phrase "all cash collections." One-half "must be used" * * * for the payment of withdrawals in the order registered, and the other half "may be used" for the payment of withdrawals other than in the order registered, etc. The only reservation which is permitted out of "all cash collections" is for "outstanding contracts," which term is specifically defined by the statute and as so defined does not include the making of new loans.

It is my opinion, therefore, that your question should be answered in the negative and that the withholding of payments to members who desire withdrawals when there is money out of cash collections not needed in order to meet outstanding contracts is in violation of the law.

One of the purposes of a building and loan association is to provide a system whereby people of limited means through thrift and economy and small periodical payments may provide homes or funds for use in time of need. Good citizenship is thereby promoted. To withhold from such people in times of dire extremity the right to withdraw the funds needed and which they have saved for that very purpose is to ignore not only the statute but the real purpose of building and loan associations and the reason for their existence, which is permitted by grace of the law. Before making new loans and thereby giving financial relief to persons who are not members, a building and loan association must first discharge the duties it owes to its members.

The right of withdrawal is an absolute one vested by statute and cannot be arbitrarily withheld except insofar as the statute permits. (9 C. J. p. 938. Sec. 35.) "Statutes in all jurisdictions give to shareholders of building and loan associations the right to withdraw. The right does not exist at common law, and therefore it is restricted to the terms of the by-law or statute and in case of conflict between them the

statute must prevail. The by-laws may enlarge the privilege granted by statute, but may not restrict it, therefore compliance with the statute is all that is necessary." Sundheim Building and Loan Associations, 3rd Ed., Sec. 157. (Fitzgerald v. State Mut. Bldg. & Loan Ass'n. 76 N. J. Eq., 137, 79 Atl. 454; Booz's Appeal, 109 Pa. 592, 1 Atl. 36; Bergman v. St. Paul Mut. Bldg. Ass'n., 29 Minn. 275, 13 N. W. 120; Rhods v. Hoernerstown, etc. Ass'n., 82 Pa. 180.)