

**Opinion No. 93.****Building and Loan Associations—  
State Examiner, Powers and  
Duties May Not Be Altered  
by Associations.**

HELD: It is beyond the power of any building and loan association, in its articles or by-laws, or otherwise, to add to or to subtract from the duties of the State Examiner and ex-officio superintendent of banks. Whatever power is so conferred is conferred upon the person who is the state examiner and not upon that official.

May 1, 1935.

Hon. Frank H. Johnson  
State Examiner and Ex-officio Building and Loan Commissioner  
The Capitol

The amended articles of incorporation of the Western Loan and Building Company, contain the following provision: "The respective state officials having supervision of building and loan (or savings and loan) companies or associations in the States of California, Nevada, Oregon, Washington, Idaho, Montana, Wyoming and Utah, are hereby respectively made the proxies of each and all members of this company residing, as shown by the books of the company, in each of the said respective states; and the said respective officials, in person or by deputy, are empowered to vote the shares of each such member residing in the state of each such official at any general or special meeting where such member is not present in person or has not by written proxy specially designated some other person to vote his shares as his proxy at that particular meeting; no such other proxy to be valid for any meeting other than that therein specified." You have submitted the question whether this provision authorizes you to take part in the direction of the affairs of the said company, or to offer suggestions

or criticism to the management or the board of directors of the said company.

The duties of the state examiner and ex-officio superintendent of banks are set forth in the Constitution and laws of the State of Montana. It is beyond the power of any building and loan association, in its articles or by-laws, or otherwise, to add to, or to subtract from such duties. The provision in the articles of incorporation, quoted above, therefore cannot confer any powers whatever upon you as state examiner and ex-officio superintendent of banks. The powers of that official remain the same as they were before that provision was made. Whatever power is conferred by that article is conferred upon the person who is the state examiner and not upon that official. Such power, in my opinion, extends no further than to personally, or by deputy at such meetings represent the members who are not present at the meetings. Outside of the power to act at the meeting, you possess no power whatever. You have no authority, by virtue of such provision in the articles, to personally interfere with the management of the company, or to attend and/or direct the meetings of the directors and any interference by you personally by letter, or otherwise, in the transaction of the business of the company, or with the officers or directors thereof, would render you personally, and perhaps officially, subject to criticism and possibly make you liable personally for your acts.

It follows, of course, that the stockholders, by their election, have placed full responsibility upon the directors for the management of the company, and, outside of the general duties you possess as an official, no responsibility rests upon you either officially or personally by virtue of said provision.