

No. 327

**BANKS AND BANKING—SUPERINTENDENT OF
BANKS—BUILDING AND LOAN ASSOCIATIONS—
FEDERAL BUILDING AND LOAN ASSOCIATIONS**

Held: Where a Montana corporation acts as liquidating agent for divested assets of federal building and loan association, such corporation is not such type of organization as to fall within the jurisdiction of the state superintendent of banks.

December 31, 1941.

Mr. W. A. Brown, State Examiner
and Ex-Officio Superintendent of Banks
State Capitol Building
Helena, Montana

Dear Mr. Brown:

You have submitted the following facts and questions for a ruling from this office:

"Some years ago the United States Building and Loan Association, which had been originally organized under the laws of our state, was converted into a federal building and loan association, and in order to conform to federal requirements segregated the assets of their association on a 60-40 basis. Sixty per cent of the best assets were retained by, or transferred to, the federal corporation, which in turn assumed and agreed to pay sixty per cent of the liabilities owing by the state corporation at the time of the conversion. The remaining forty per cent of the assets which, of course, were those classified as 'slow' or 'doubtful,' were transferred to the Intermountain Realty Company, a corporation organized under the laws of this State for the purpose of having the assets liquidated to pay the remaining forty per cent of the liabilities which had not been assumed by the federal corporation and for which the Montana corporation had issued its participation certificates to the shareholders of the United States Building and Loan Association.

"We would thank you to advise us if, in your opinion, the Intermountain Realty Company and like state corporations come under the supervision of this Department, and whether or not it is our duty to determine what disposition has been made of the assets sequestered from the building and loan association."

Subsequent to this request you succeeded in obtaining copies of reports of examination of the Intermountain Realty Company made by the Examiner's Division, District No. 11, of the Federal Home Loan Bank Board, covering periods from December 1, 1937, to October 5, 1940. You have indicated the reports, while comprehensive as to certain matters, do not disclose information from which you can determine the propriety and handling of the liquidation. In your letter and memorandum analysis which you also submitted it is demonstrated liquidation practices have been followed which your office might not approve. Whatever may be

the condition and modus operandi of this company, the first and vital question to be determined is the one you have propounded as to your jurisdiction to proceed.

Jurisdiction to proceed by the superintendent of banks rests upon the theory the liquidating corporation is within the purview of state statutes governing building and loan associations. Chapter 37 of the Revised Codes of Montana, 1935, deals with the building and loan associations. Section 6355.1 of the Revised Codes of Montana, 1935 (part of Chapter 37), defines a building and loan association thus:

"A corporation, mutually operated, for the purpose of encouraging home building and thrift among its shareholders and loaning substantially all of its funds to them on real estate mortgage security, shall be known in this act as a building and loan association, and shall be under the supervision of the state examiner and ex-officio superintendent of banks, whose duty it shall be to enforce all laws with respect thereto."

And Section 6355.29 makes the act applicable to similar organizations by providing:

"The provisions of this act shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees or combinations or persons whatsoever, whether foreign or domestic, and whether citizens of this state or otherwise, that transact, or attempt to transact, a building and loan business, or a business of like kind or character, or where, by its or their charter, constitution, by-laws or by a declaration of trust, or other device, or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series, from which fund or series loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes, within the boundaries of this state. The name association when used in this act shall be deemed to include any of the above named."

Under Section 6355.25, Revised Codes of Montana, 1935, the powers of the superintendent of such association are set forth to be:

"Such superintendent of banks shall have power to prescribe for and supervise uniform system of reports, and accounting for all associations; shall have access to and may compel the production of all books, papers, securities and moneys of any association under examination. He shall have power to administer oaths to and examine the officers and agents of such association and its affairs."

And like powers are granted by Section 212 of the Revised Codes of Montana, 1935, which provides:

"The state examiner or his assistant has power to examine any books, papers, accounts, and documents in the office or possession of any county or state officer, or banking or other institution referred to in this act, and to send for persons or papers and to examine under oath any and all persons concerning the same."

By Section 6355.48, Revised Codes of Montana, 1935, voluntary liquidation of such associations is subject to examination and under the supervision of the superintendent of banks.

When an association appears to be in an unsound condition or conducting its business in an unsafe or unlawful manner, the superintendent of banks may take over its books, records and property and take proceedings to restore a sound condition or liquidate the concern.

Section 6374.8 of the Revised Codes of Montana, 1935, provides for the conversion of a building and loan or other home-financing institution into a federal savings and loan association. Such conversion has the effect stated by Section 6374.9, as follows:

"At the time when such conversion becomes effective as hereinbefore provided, said association shall cease to be supervised by this state and all of the property of such association including all of its right, title and interest in and to all property of every kind and character whether real, personal or mixed shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed, continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction; and said federal savings and loan association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state association and said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place; it being expressly declared that the said federal savings and loan association shall be merely a continuation of the said state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction."

Federal savings and loan associations are authorized by the Federal Home Owners' Loan Act of 1933, Chapter 64, Section 5. Title 12, Section 1464, U. S. C. A., provides in part:

"Federal Savings and Loan Associations.

(a) ORGANIZATION AUTHORIZED. In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States. . . .

(d) RULES AND REGULATIONS. The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation." (Emphasis mine.)

On October 22, 1934, the Federal Home Loan Bank Board, acting under the authority granted in the portion of the statute above emphasized, promulgated a regulation the material portion of which provided:

"BE IT RESOLVED by the Federal Home Loan Bank Board that in all cases of members of Federal Home Loan Banks desiring to convert themselves into Federal Savings and Loan Associations where such institutions hold assets which it is not desirable for a Federal Savings and Loan Association to hold, the following procedure is recommended: * * * In cases where the existing institution can neither retain such unacceptable assets, administer or liquidate the same, nor convey the same to a holding company or trustees for the benefit of interested parties on an equitable basis, it is recommended that such institution segregate its assets into acceptable and unacceptable assets and request that it be converted into a Federal Savings and Loan Association upon a basis of the issuance of Federal Savings and Loan Association shares against such acceptable assets and the immediate transfer by the Federal Savings and Loan Association shares against such acceptable assets and the im-

mediate transfer by the Federal Savings and Loan Association of the unacceptable assets to trustees or to a holding company, the management or control of which is legally vested in the individuals who are the directors of the Federal Savings and Loan Association and their successors in office, in consideration of the issuance to the shareholders or other interested parties on an equitable basis of debentures or shares or other certificates of interest, and in further consideration of the vesting by some legal means of such control for the period of management and liquidation of such assets for the benefit of those who are entitled thereto. . . .”

It is obvious the procedure adopted in the particular case you mention is based upon the foregoing statutes and regulations.

We must conclude it is immaterial as to what form of agency the divested assets are entrusted for the purpose of liquidation. The agency may consist of a trusteeship in the nature of personal trustees or a holding company. The fact that—in this case—it is a corporation chartered by the State of Montana cannot operate to remove its true character as a liquidating agency for a federal savings and loan association.

I am informed a number of citizens of Montana hold participation certificates in the liquidating company. However commendable the effort may be of state officials, particularly the superintendent of banks, in attempting to exercise supervision over the affairs of the company, I am forced to conclude no such jurisdiction exists.

Sincerely yours,

JOHN W. BONNER
Attorney General