

**Opinion No. 2****BUILDING AND LOAN ASSOCIATIONS: Powers, agents, branch offices, creation of; SECTIONS 5-1028, 7-119, REVISED CODES OF MONTANA, 1947.**

- Held:**
- 1. A domestic building and loan association does not have the power to authorize an agent to accept payment on loans made by the association or to repurchase share accounts of the association.**
  - 2. A domestic building and loan association is not authorized under our statutes to establish a branch office.**

---

March 15, 1961

Mr. Albert E. Leuthold  
Superintendent of Banks  
State Capitol  
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion as to whether a building and loan association authorized to do business under the laws of Montana in a city in Montana, may establish an agent in leased quarters in a portion of the same city some distance from the principal place of business. You advise me that the rental for the offices leased and the furniture would be paid for by the association. You also state that it is proposed the agent would perform the duties as follows:

“To solicit and accept investment share accounts and to repurchase share accounts all in accordance with the state law governing building and loan associations.

“To accept payments on loans made by this association, but not to solicit loans.

"To keep no records of the balance of the individual share or loan accounts except the record of the current day's business and this daily record to be transmitted to this association to be inscribed on its permanent records."

The agent would also receive such compensation as the board of directors of the association might fix. You also state there would be, in all likelihood, two tellers in addition to the agent in the new office.

The statute which authorizes a building and loan association to appoint an agent also defines the authority of an agent. The statute referred to is Section 7-119, R.C.M., 1947, which reads in part as follows:

"It shall be unlawful for any building and loan association doing business within the state of Montana to employ any agent for the purpose of soliciting loans and/or the sale of stock in the said association, unless he shall first be licensed by the superintendent of banks to solicit loans and/or sell stock of said association and no agent representing any association, foreign or domestic, doing business within the state of Montana, shall solicit loans and/or the sale of stock of any association unless he shall first be licensed by the superintendent of banks."

It is to be noted that a licensed agent may do two things: He may solicit loans, and he may sell stock of the association.

It should be further noted that our statutes do not authorize building and loan associations to establish agents in leased quarters at some distance from the principal place of business for the purpose of conducting the business here proposed. For the purpose of interpreting statutes, our Supreme Court has long recognized the rule of **expressio unius est exclusio alterius**. Therefore, a business which is created and regulated by statute may not, in the conduct of its business, exceed the express statutory authority which has been granted to it. The repurchases of share accounts and the acceptance of payments on loans under the proposed plan submitted in your question would violate Section 7-119, R.C.M., 1947. A building and loan does not have the authority to appoint an agent to perform such duties.

It might be urged that the appointment of an agent who would conduct the affairs of the building and loan in leased quarters some distance from the principal office in the same city would be permitted as a branch of the principal office. Our statutes regulating the operations of building and loan associations, Chapter 1, of Title 7, R.C.M., 1947, are silent as to the power of building and loan associations to have branch offices. There have been no cases decided in Montana relative to branch offices. This same question has been raised as to the power of a domestic bank to establish a branch. This office in an opinion, Volume 3, 245, Report and Official Opinions of Attorney Gen-

eral, held that under the law, as it was then, a branch bank could not be established where there was no statutory authorization. Subsequent to this opinion, it was provided by law (Section 5-1028, R.C.M., 1947) that a state bank could not establish a branch.

As a legal matter, branch banks may not be established except as **expressly authorized** by statute. 9 C.J.S. Banks and Banking, Sec. 55; 7 Am. Jr., Banks, Sec. 23. In the latter authority it is stated, among other things:

"As a reason for prohibiting the establishment of branch banks it has been stated that branch banks in effect carry on the same business as that conducted by the main institution, without being subject to the safeguards thrown around the establishment and administration of the latter. The view has also been taken that public policy does not favor the establishment of branches by state banks, and that the latter should not be permitted to establish branches in the absence of **express** statutory authority, since banks stand on a different basis in this regard from private corporations generally."

A recent case which is analogous to the facts presented here for consideration is that of Farmers and Mechanics Savings Bank v. Department of Commerce, ..... Minn. ...., 102 N.W. (2d) 827, in which case the Minnesota Supreme Court considered the establishments of a branch mutual savings bank. A mutual savings bond is similar to a building and loan association as defined in our statutes.

The Minnesota court said:

"It is well recognized that in the absence of express statutory authorization a bank has no right to establish branch banks. 9 C.J.S., Banks and Banking, Sec 55; 7 Am. Jur., Banks, Sec. 23; Annotations, 50 A.L.R. 1340 and 136 A.L.R. 471. Unlike other commercial or manufacturing corporations, banks are quasi-public in nature and the legislatures have in the public interest exercised a careful supervision over them. It appears from the decisions and administrative interpretations that the policy of the law is that banks are not allowed to exercise functions not strictly authorized by law."

Also, this opinion held that mere convenience alone would not justify the establishment of a branch office without positive legislation so permitting. The court in this connection said:

"It is our view that if the establishment of branch offices is necessary and desirable to the corporate life of savings banks it is for the legislature to grant that relief and not for the court."

It is therefore my opinion:

1. A domestic building and loan association does not have the power to authorize an agent to accept payment on loans made by the association or to repurchase share accounts of the association.

2. A domestic building and loan association is not authorized under our statutes to establish a branch office.

Yours very truly,  
FORREST H. ANDERSON  
Attorney General