

VOLUME 32

Opinion No. 18

FUNDS; deposit in savings and loan associations; not permitted; BUILDING AND LOAN ASSOCIATIONS; purpose and powers; SECTIONS 11-1914, 11-1310, 16-2001, 16-2044, 16-2050, 7-101, 7-115, 7-148, Revised Codes of Montana, 1947.

HELD: The funds of fire department relief associations, cities, towns, counties and school districts may not be invested in state or federally chartered savings and loan associations.

July 11, 1968

Mr. Albert E. Leuthold
State Examiner
Mitchell Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion with regard to the following situation. Sections 11-1914, 11-1310, 16-2001, 16-2044 and 16-2050 of the Revised Codes of Montana, 1947, permit the investment of funds of fire department relief associations, cities, towns, counties and school

districts. These sections were amended in 1963 by the inclusion of "any time or savings deposit" as a permissible investment. Specifically you would like to know if the term "any time or savings deposit" includes funds placed with state chartered building and loan associations or federal savings and loan associations.

The legislature did not specify the type of institution in which such funds could be placed; however it is my opinion that they did not intend that these funds be placed in building and loan associations.

Chapter 1 of Title 7, Revised Codes of Montana, 1947, regulates the operation of state chartered building and loan associations. The federal savings and loan associations are governed by 12 U.S.C.A. §1464 and the regulations issued thereunder. The purpose and definition of state chartered building and loan associations is stated in section 7-101, R.C.M. 1947, which states in part:

A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security, shall be known in this act as a building and loan association or a savings and loan association, * * * * The members of a building and loan association shall be its shareholders, stockholders, borrowers or purchasers of real estate under contract. * * * *

12 U.S.C.A. §1464 (a) contains a similar statement as to the purpose of federally chartered savings and loan associations. Thus it can be seen that the legislature and congress did not intend that they engage in the general practice of banking.

The statutes governing the operation of these associations contemplate that persons who place money with them become shareholders in the corporation. In **First National Bank v. County of Dawson**, 66 Mont. 321, 213 Pac. 1097, the Montana Supreme Court stated:

In passing it is well to note that virtually there is no difference between "members" and "depositors" as these terms are employed in the statute. Depositors must be and are members. It may be that the word "depositor" is meant to designate a non-borrowing member.

Section 7-115, R.C.M. 1947, states that the owners of shares in a building and loan association are called stockholders. Were the state of Montana or any of its political subdivisions to place funds in a building and loan association it may run afoul of Section 1 of Article XIII of the Montana Constitution. This section provides:

Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation,

or a joint owner with any person, company or corporation except as to such ownership as may accrue to the state by operation or provision of law.

The statutes regulating state chartered building and loan associations specifically prohibit them from receiving money on deposit. Section 7-148, R.C.M. 1947, states:

No building and loan association shall carry any demand, commercial or checking account, or receive any sum of money on deposit.

Section 12 U.S.C.A. §1464 (b) provides with regard to federally chartered associations:

* * * No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board.

Money placed in a building and loan association is not a deposit. In **Wisconsin Bankers Association v. Robertson**, 294 F. 2d 714 (1961) the court held that a "share" in a federal savings and loan association is an investment and is not equivalent to the deposit of money in a bank, citing for authority **Aetna Casualty and Surety Co. v. Porter**, 296 F. 2d 389. In the **Porter** case the status of money placed in a federal savings and loan association was discussed.

* * * A share account in a federal association is distinguishable from ordinary bank savings account in other respects: the owner of a share account becomes, by virtue of that ownership, a voting member of the association and thus more nearly comparable to a stockholder of a bank than one of its depositors; and we have shown that, as a share account owner, he is not a creditor of the association as a depositor is a creditor of a bank. * * *

If the legislature had intended to allow the funds in question to be placed in savings and loan associations then they would have so stated. By using the term "deposit" it is my opinion that they intended to limit the placing of these funds to banking institutions. However as previously pointed out even if it were specifically authorized there is some question as to whether it could be done in view of Section 1, Article XIII of the Constitution.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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