

VOLUME NO. 34

Opinion No. 55

**BUILDING AND LOAN ASSOCIATIONS - Permanent or guarantee stock-type associations, operation of. Sections 7-130 through 7-137, R.C.M. 1947.**

- HELD:**
- 1. Permanent or guarantee stock-type building and loan associations are not ineligible per se to apply to do business in the state of Montana.**
  - 2. A permanent or guarantee stock-type association applying to do business in Montana must comply with the provisions of Title 7, chapter 1, R.C.M. 1947, pursuant to section 7-130, R.C.M. 1947.**

October 19, 1972

Mr. L. W. Alke, Administrator  
Financial Division  
Department of Business Regulation  
805 North Main  
Helena, Montana 59601

Dear Mr. Alke:

You have requested my opinion as to whether an out-of-state domiciled savings and loan association, which is a permanent or guarantee stock type of organization, can maintain an office in Montana and transact a savings and loan business in this state.

The provisions of sections 7-130 through 7-137, Revised Codes of Montana, 1947, deal with the regulation of foreign building and loan associations wishing to do business in Montana.

Section 7-130, *supra*, provides in part:

“The provisions of this act shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees or combinations of 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, . . . The name association when used in this act shall be deemed to include any of the above-named.”

Section 7-131, R.C.M. 1947, provides:

“Any association as defined in the foregoing section organized under the laws of any state, other than Montana, or of the United States, or of any foreign government, shall, before doing business within this state, file in the office of the secretary of state and in the office of the superintendent of banks, a duly authenticated copy of their charter, articles of incorporation, or articles of agreement, and also a statement, verified by oath of the president and secretary of such corporation or managing officials if other than a corporation and duly verified, showing:

“1. The name of such association and the location of its principal office or place of business without this state; and the location of the place of business or principal office within this state:

“2. The names and residences of the officers, trustees or directors;

“3. The amount of capital stock;

“4. The amount of capital invested in the state of Montana.

“Such association shall also file, at the same time, and in the same offices, a certificate, under seal and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said association has consented to all the license laws and other laws of the state of Montana relative to foreign associations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the association.”

Thus, it is clear that a foreign building and loan association may qualify to do business in Montana by fulfilling the provisions of section

7-131, *supra*, and otherwise meeting the requirements set forth in Title 7, chapter 1, R.C.M. 1947, as provided for in section 7-130, *supra*.

Of concern to the situation of a foreign permanent or guarantee stock company qualifying to do business in Montana is section 7-101, R.C.M. 1947, which provides:

“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, 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. The members of a building and loan association shall be its shareholders, stockholders, borrowers or purchasers of real estate under contract. Such associations shall have continual succession and shall be organized under the provisions of this act. Wherever in this act the name building and loan association is used the same shall apply to and comprehend savings and loan associations organized under this act.” (Emphasis supplied)

While the types of associations noted in sections 7-130 and 7-131, *supra*, do not specifically include stock-type associations, it is clear that the broad language of these sections does not preclude a stock association from applying to do business as a building and loan association in Montana. The question then arises as to whether the language in section 7-101, *supra*, is to be construed as prohibiting a permanent or guarantee stock company from engaging in the building and loan business in Montana.

The term “mutually operated” as used in section 7-101, *supra*, is not defined elsewhere in the provisions of Montana law dealing with building and loan associations, nor has the term been defined by our courts. While the term is used in the statutes of other states, there is no indication that other jurisdictions have had occasion to discuss the meaning and significance of the term. Thus, the expression should be construed in light of the statutory provisions surrounding it in order to ascertain its meaning. In *Aleksich v. Industrial Accident Fund*, 116 Mont. 127, the court said:

“To ascertain the intention of the legislature the Act must be read as a whole and, where possible, conflicting and ambiguous parts made to harmonize. And where one part of a statute deals with a subject in general and comprehensive terms, while another part deals with it in a more minute and definite way, the two parts should be read together and, if

possible, harmonized with a view to giving effect to a consistent legislative policy.”

Section 7-136, R.C.M. 1947, provides in part:

“The powers, rights, duties, privileges and obligations of every such association heretofore and hereafter organized and doing business **in the form of a character similar to that authorized by this act**, shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act, to the same extent and effect as if said association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws and rules of each heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where such articles of incorporation, bylaws or rules are inconsistent with its provisions; . . . Except as above set forth, and after six months after the passage and approval of this act, no domestic or foreign association now engaged in the business of a building and loan association, or a business of like character, shall be permitted to conduct such business in this state unless it comply in every respect with the provisions of this act.” (Emphasis supplied)

Building and loan associations are creatures of statute. The court in **Smith v. Bath Loan and Building Association**, 126 Me. 59, 136 A. 284, said:

“Loan and building associations are creatures of statute, and it follows that the statutes which give them being must be followed so far as provisions for their existence, powers, rights, and liabilities, as well as the rights and liabilities of their members, are concerned.”

Thus, it would appear from the above-quoted provisions of section 7-136, *supra*, that the character of a building and loan association is derived from the statutes which must be complied with before it can do business in Montana. In essence, a mutually-operated corporation would be one which complied with the provisions of Title 7, chapter 1, Revised Codes of Montana, 1947. An entity seeking to do business in Montana, which does not comply with the provisions of chapter 1, *supra*, cannot do business in this state.

Whether a stock association can in fact comply with such provisions is a factual question to be determined on a case by case basis after submission of the material referred to in section 7-131, *supra*. The fact that an association is a stock-type association would not be grounds *per se* for denying the application without further review.

This opinion is not to be construed as conflicting with 34 **Opinions of the Attorney General**, no. 53, which held in part: "Montana statutes do not permit the establishment or operation of branch offices in this state by a foreign building and loan association." That opinion extends the provisions of 29 **Opinions of the Attorney General**, no. 2, prohibiting the establishment of branch offices by domestic building and loan associations to foreign building and loan associations. It does not prohibit the establishment of a principal place of business in this state by a foreign association as contemplated by sections 7-131, *supra*, through 7-136, *supra*.

THEREFORE, IT IS MY OPINION that:

1. A foreign building and loan association organized as a permanent or guarantee stock-type association is not ineligible per se to apply to do business in the state of Montana.
2. A foreign building and loan association organized as a permanent or guarantee stock-type association applying to do business in the state of Montana must comply with the provisions of Title 7, chapter 1, pursuant to section 7-130, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General