

BUILDING AND LOAN: Association may not have both an undivided profits and unallocated reserves account.

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2/28/50

Mr. Clarence Webb
Supervisor, Division of
Savings and Loan Supervision
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion upon the following matter:

Under Section 39 of the Savings and Loan Law may an association maintain both an undivided profits account and unallocated reserves account.

Section 35, Laws of Missouri, 1945, page 1578, Section 8257.34, M.R.S.A., provides as follows:

"The board of directors of each association shall set up and maintain the reserves required, and may maintain such additional reserves as are permitted, by this Act. The board shall make semi-annually from net earnings or undivided profits appropriations for reserves required by law and such additional appropriations, if any, as may be deemed advisable by the board for the protection of the association."

Section 36, Laws of Missouri, 1945, page 1578, Section 8257.35, M.R.S.A., provides, in part, as follows:

"Each association shall accumulate from its net earnings and maintain a contingent fund (which may also be termed general reserve) for the sole purpose of absorbing losses. On the semi-annual closing dates, each association shall, before declaration of any dividend for such semi-annual period,

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transfer to such fund or reserve an amount not less than ten per cent of its net earnings for such semi-annual period. * * *

Section 38, Laws of Missouri, 1945, page 1578, Section 8257.37, M.R.S.A., reads as follows:

"On each semi-annual closing date, after payment or provision for payment of all expenses and transfers to reserves, the remainder of net earnings shall be credited to the undivided profits account."

Section 39, Laws of Missouri, 1945, page 1578, Section 8257.38, M.R.S.A., which is mentioned in your request and was a part of the Senate Committee Substitute for Senate Bill No. 65, passed by the 65th General Assembly, states:

"The association may, at its option, designate the undivided profits account as unallocated reserves. * * *"

Section 40, Laws of Missouri, 1945, page 1578, Section 8257.39, M.R.S.A., reads as follows:

"As of June 30 and December 31 of each year the board of directors shall declare such dividend, if any, from the undivided profits account as the board shall deem advisable, taking into consideration existing conditions; provided however that any association which, upon the effective date of this Act, had been closing its books and declaring dividends upon other semi-annual dates may continue to do so, with the consent of the supervisor."

Under the above statutes, it will be seen that the Savings and Loan Association is required to set up a contingent fund which is to be used for the purpose of absorbing losses, and that such contingent fund may, in the discretion of the Board of Directors of the Association, be designated as a general reserve fund. Further, the association is required to provide an undivided profits account, but permission is given to the association to designate such undivided profits account as unallocated reserves.

We believe, from a reading of the statutes, that it was the intent of the Legislature that the association had its

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choice as to what name should be applied to the two funds. The contingent fund could be designated as a general reserve fund, while the undivided profits account could be called unallocated reserves. The reason for giving to the association its choice as to the appellation that could be applied to the fund out of which dividends were to be paid was that the term "undivided profits" might lead a shareholder to believe such account was available and should be paid out in dividends in its entirety, while the term "unallocated reserves" would indicate that a part of said fund is being held in reserve, "taking into consideration existing conditions," as authorized in Section 40, supra. We do not believe the Legislature intended that both the undivided profits account and unallocated reserves account could be maintained by the association, but merely gave to the association its choice as to names, the fund remaining the same no matter by what name it was designated.

CONCLUSION

It is, therefore, the opinion of this department that a Savings and Loan Association may not maintain both an undivided profits account and an unallocated reserves account.

Respectfully submitted,

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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