

Savings and Loan) Savings and Loan Association subject to pro-
Associations:) visions of Chap. 369, RSMo, 1949, may not
) amend charter to vest power in board of di-
) rectors to make, amend, alter and repeal
) by-laws.



August 19, 1952

8-22-52

Honorable Clarence Webb, Supervisor
Division of Savings and Loan Supervision
Department of Business and Administration
Jefferson City, Missouri

Dear Mr. Webb:

In your letter of April 16, 1952, you requested a formal opinion from this department relative to corporate powers of savings and loan associations operating under the provisions of Chapter 369, RSMo, 1949. The initial request for an opinion has been clarified by additional correspondence sent to this department at your insistence and the question to be ruled by this opinion is restated as follows:

"May a savings and loan association organized in Missouri and operating by virtue of the provisions contained in Chapter 369, RSMo, 1949, amend its articles of agreement so as to provide that the power to make, alter, amend and repeal its by-laws shall be vested in the association's board of directors?"

Section 369.120, RSMo, 1949 provides:

"1. Any amendment to the by-laws which is to be offered at any meeting of the members shall first be filed with the supervisor not less than fourteen days prior to the date of such meeting.

"2. If the supervisor has any objection to the proposed amendment, he shall give written notice of such objection to the chairman of the board of directors and president within seven days after receipt of such proposed amendment, which objection shall be read and available for inspection at the meeting of the members.

"3. No amendment to the bylaws shall become effective until same is approved by the supervisor as practically and financially sound.

"4. The supervisor shall be notified of any amendment to the bylaws within ten days after adoption and unless he shall disapprove of such amendment within twenty days, same shall stand as approved by him."

The section just quoted clearly discloses that any amendment to the by-laws of a savings and loan association must ultimately be submitted to the members of the association before it can become a binding rule on the association's members. It appears on its face to vest exclusive power in the stockholders to pass on amendments to by-laws, subject of course to having the same approved by the savings and loan supervisor. Consequently, we find the basic law of savings and loan associations, Chapter 369, RSMo, 1949, clear and distinct on the proposition of amending by-laws. The serious question to be disposed of is whether the stockholders may amend the original charter of the association so as to give the board of directors sole authority to make, alter, amend and repeal all by-laws of the association.

On the subject of amendment of a charter of a building and loan association we find the following language in Sundheim's "Building and Loan Associations," Third Edition, Section 38:

"The charter of an association can be changed by legislative enactment, as practically all the states reserve this right in their constitutions and statute law. It may also be amended by proper application to a judicial or ministerial authority, in accordance with the law of the state that created the association. Thus, the name of the association, the term for which it is to exist, the number of directors, and the amount of the capital stock are examples of changes frequently made. The statutes of the various states prescribe the amendments which may be allowed, and they must be such as are authorized by law at the time the application is made, and the application must be made by the stockholders."

In addition, we find the subject of charter amendment of a building and loan association discussed in the following language from Thompson on "Building Associations", Second Edition, Sec. 28:

"The power to amend presupposes legislative authority, and all powers rightfully exercised by corporate bodies being conferred by the government either in express terms or by clear implication, authority for their corporate acts must be found in the grant or in the requirement of some legislative act."

Examination of the statutes found in Chapter 369, RSMo, 1949, relating to savings and loan associations has not brought to light any provision disclosing that a charter of such an association may make provision whereby the directors of the savings and loan association may be given power to make, alter, amend and repeal all by-laws. It seems clear to us that such a statutory provision would be repugnant to the letter and spirit of language contained in Section 369.120, RSMo, 1949, cited above.

CONCLUSION

It is the opinion of this department that a savings and loan association organized in Missouri and operating by virtue of the provisions contained in Chapter 369, RSMo, 1949, does not have authority to amend its articles of agreement so as to provide that the power to make, alter, amend and repeal its by-laws will be vested in the association's board of directors, rather than in its stockholders.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. Taylor
Attorney General

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