education from any cause or in case, because of the unfitness of such property, it becomes necessary at any time to demolish the same in whole or in part, such replacement fund may be used to rebuild, on the original site or elsewhere, or to restore, repair or improve the property so damaged, demolished or destroyed, and for said purpose the board of education may sell or use any of the securities or moneys of such replacement fund."

Having determined that a permanent improvement fund may be established by a board of education for the purpose of acquiring or constructing any permanent improvement or improvements which a subdivision is authorized to acquire or construct, it becomes necessary to consider the matter of levying a tax from year to year for the purpose of building up such a fund.

Section 5625-5, General Code, provides insofar as is pertinent as follows:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements. * * * ."

It is obvious that under the provisions of this section an item may be included in the general levy to provide for a special improvement fund as distinguished from a specific improvement fund. It must be borne in mind, however, that the total amount that may be raised by the general levy for current expenses which is paid into the general fund is subject to adjustment by the budget commission. Section 5625-24 provides that the budget commission shall adjust the estimated amount required from the general property tax for each fund so as to bring the levies within the limitations of the Budget Law.

Specifically answering your question, I am of the opinion that:

1. A board of education may, with the approval of the Bureau of Inspection and Supervision of Public Offices, establish a permanent improvement fund for the purpose of acquiring or constructing any permanent improvement or improvements which the subdivision is authorized to acquire or construct by transferring to such fund moneys appropriated therefor from the general fund.

2. Moneys may be provided from year to year for such fund by appropriations from the general fund.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2000.

BUILDING AND LOAN ASSOCIATIONS—LOANING PRIMARILY AND CONTINUOUSLY ON CHATTELS AS SECURITY SINCE JANUARY 1, 1913—AUTHORIZED TO CONTINUE SUCH LOANING.

SYLLABUS:

A building and loan association or a savings and loan association which has been making loans primarily and continuously since January 1, 1913, *upon chattels as se-*

curity, to its members and others, is authorized under the provisions of Section 9657, General Code, to continue loaning money on such securities, regardless of the purpose for which the loans may be made.

COLUMBUS, OHIO, June 19, 1930.

HON. C. M. CHAREST, *General Counsel, Bureau of Internal Revenue, Treasury Department, Washington, D. C.*

SIR:—This is to acknowledge receipt of your letter of recent date, being your file GC:C:LHB:240338, which is as follows:

> "In the course of the administration of the federal income and profits taxes, the following questions have arisen respecting the powers of building and loan associations, and savings and loan associations under the laws of the State of Ohio:
>
> (1) Was it permissible under the laws of the State of Ohio and regulations promulgated thereunder, for a building and loan association organized under the laws of Ohio prior to the year 1900 for the purpose of raising money to be loaned to its members and others and for such other purposes as are authorized by law, and which has since its organization continuously operated in that state, to make loans during the years 1917 to 1927, inclusive, on chattels as security, and if so, did the permission extend to approximately 94% of the total loans made?
>
> (2) Was it permissible under the laws of the State of Ohio and regulations promulgated thereunder for such a building and loan association to make loans during the years 1917 to 1927, inclusive, for the personal use of the borrower rather than for the purpose of making payments on homes?
>
> (3) Did the same rules applicable under questions (1) and (2) apply also during the years 1917 and 1927, inclusive, to savings and loan associations organized under the laws of the State of Ohio prior to the year 1900 for the purpose of raising money to be loaned to its members and others and for such other purposes as are authorized by law, and which have since continuously operated in that state?"
>
> An expression of your opinion on the above questions will be greatly appreciated."

A building and loan association or a savings association is defined in Section 9643 of the General Code of Ohio as "a corporation for the purpose of raising money to be loaned to its members, and others." The provisions of the Ohio law as to the particular securities upon which loans may be made by associations of this character are contained in Section 9657, General Code, which provides as follows:

> "To make loans to members and others on such terms and conditions as may be provided by the association and upon the following securities only:
>
> First. Obligations secured by mortgage or deed of trust on real estate or any leasehold estate therein, which mortgages or deeds of trust may be made direct to the association or they may be made to third persons or corporations and pledged by them to the association as collateral. Such obligations shall be the first liens on real estate, or any leasehold estate therein, but additional loans may be made where the association holds all prior mortgage liens. Nothing herein, however, shall prevent an association organized under this act from accepting additional security other than that herein provided where the primary and principal security is a first mortgage or deed of trust on real estate or any leasehold estate therein.

Second. Obligations secured by pledge of stock or of deposits in such association, but such loans shall not exceed either the paid-up value or the withdrawal value of such stock or deposits.

Third. Obligations secured by pledge of any of the securities provided for in Section 9660 of the General Code not to exceed, however, ten per cent of the assets of the association.

Fourth. Building and loan companies that have been making loans primarily on other securities than those named in the above sections continuously since January 1, 1913, are authorized to continue the loaning on such securities."

It will be noted that the last paragraph of the foregoing section expressly exempts associations of this nature from the restrictions therein set forth as to the making of loans, where they have been making loans primarily on other securities than those named therein continuously since January 1, 1913. You state that the associations in question were organized under the laws of Ohio prior to the year 1900 and it, therefore, becomes necessary to determine what limitations, if any, as to security upon which loans may be made, were placed upon these associations at the time of their incorporation. The first legislation enacted in Ohio for the government of building and loan associations was passed by the General Assembly in the year 1891, 88 O. L. 469. Section 3 of that act authorized such associations "to make loans to members or depositors on such terms, conditions, and securities as may be provided in the constitution and by-laws." The limitations contained in Section 9657, supra, as to the securities upon which loans might be made, were not imposed upon building and loan or savings associations until 1923 and the last paragraph of the section was then enacted in its present form. 110 O. L. 69. It should be observed that in case a building and loan association was incorporated and doing business prior to January 1, 1913, and making loans to a limited extent on securities other than those named in the first, second and third paragraphs of Section 9657, such association would probably not be authorized to continue making such loans since the exemption in the fourth paragraph of the section relates only to companies which have been primarily and continuously making loans on other securities than those named in the section. The company to which you refer in your first question was apparently clearly within this exception.

In your third question, you inquire as to the law relating to savings and loan associations. Since Section 9643, General Code, refers to building and loan associations and savings associations interchangeably, it is clear that the legislature of this state has not distinguished between the two.

Specifically answering your questions, it is my opinion in view of the foregoing discussion, that a building and loan association or a savings and loan association which has been making loans primarily and continuously since January 1, 1913, upon chattels as security, to its members and others, is authorized under the provisions of Section 9657, General Code, to continue loaning money on such securities, regardless of the purpose for which the loans may be made.

Respectfully,
GILBERT BETTMAN,
Attorney General.