

OPINION NO. 67-102

Syllabus:

A building and loan association organized under Chapter 1151, Revised Code, may not merge with either a State-chartered Bank organized under Chapter 1101, et seq., Revised Code, or a National Bank, organized under Title 12, U.S. Code.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, November 8, 1967

I have before me your request for my opinion which poses the following questions:

"1. May a State-chartered Building and Loan Association, organized under Chapter 1151, Ohio Revised Code, merge with a State-chartered Bank, organized under Chapter 1101, Ohio Revised Code?

"2. May a State-chartered Building and Loan Association, organized under Chapter 1151, Ohio Revised Code, merge with a National Bank, organized under National Bank Laws, Title 12 U.S. Code?"

A building and loan association is a specific creature of statute having only the authority granted it by Chapter 1151, Revised Code.

The syllabus in the case of State, Ex Rel., v. Court of Common Pleas, Et Al., 124 Ohio St. 269, reads in pertinent part:

"1. The legislature, recognizing the quasi-public character of building and loan associations, has enacted laws not only providing for their inspection, supervision and control but also prescribing the method of their dissolution and the liquidation of their assets, and has conferred upon the Superintendent of Building and Loan Associations, the authority essential to accomplish that result expeditiously and economically."

The court stated further at page 278:

* * * * *

"* * * We are of the opinion that by these provisions the legislature has provided not only an exclusive method for the supervision and control of the affairs of building and loan associations, but also an exclusive method of procedure for the dissolution of such associations and the liquidation of their assets,* * *

* * * * *

(Emphasis added)

It can thus be seen that a building and loan association is bound by the provisions of Chapter 1151, Revised Code, with regard to its whole existence. In addition, only a corporation which is organized as a building and loan association may exercise its purposes and powers.

Section 1151.01, Revised Code, reads in part:

"(A) 'Building and loan association' means a corporation organized for the purpose of raising money to be loaned to its members or to others; and 'building and loan association' includes 'savings association.'" (Emphasis added)

Thus the purpose of the association is express. There is no authority in Chapter 1151, Revised Code, which could be construed as giving such an association the right to change its purpose and

determine that it should be a participant in a different enterprise.

To the contrary, it is expressly declared by Section 1151.61, Revised Code, that:

"* * * * *

"* * *The board shall not adopt, and the superintendent shall not approve, any plan which, by amendment to the articles or otherwise, changes the purpose of the association from that of a building and loan association within the meaning of section 1151.01 of the Revised Code.

"* * * * *

Building and loan associations and banks are financial institutions, and are said to be quasi-public corporations and each is limited to and bound by the statutory provisions which relate to it. The powers of each are distinct and easily distinguishable, and the powers of neither may be exercised by the other unless express provisions for such exercise has been made by the General Assembly.

The effect of a consolidation or merger is described in the General Corporation Act, Section 1701.81, Revised Code, which provides in part:

"(4) The surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, powers, franchises, and authority, as well of a public as of a private nature, of each of the constituent corporations; and all property of every description, and every interest therein, and all obligations, including subscriptions to shares, of or belonging to or due to each of the constituent corporations shall thereafter be taken and deemed to be transferred to and vested in the surviving or new corporation without further act or deed; and title to any real estate, or any interest therein, vested in any of the constituent corporations shall not revert or in any way be impaired by reason of such merger or consolidation;"

Section 1701.82, Revised Code, likewise provides the effect of the merger with a foreign corporation. A National Bank is within the definition of a foreign corporation as set out in Section 1701.01, Revised Code, Subsections (B) and (C).

I believe it to be obvious then that the merger of a building and loan association with a bank, with the resultant transfer of powers, is not feasible as each type of institution is strictly limited by statute as to its authority.

Section 1151.63, Revised Code, provides:

"A building and loan association may

provide in its constitution and bylaws for the time and terms of its dissolution and for its consolidation with other such associations on terms to be determined upon by its board of directors. In case of the dissolution of such an association, its board of directors, by a majority vote of its members, may be authorized to sell and transfer its mortgage securities or other property, or both, to another corporation or person, subject to the vested and accrued rights of the mortgagors."

(Emphasis added)

There is no authority granted for a consolidation or merger with a different kind of corporation. Therefore, if a building and loan association should make the determination that it should cease to exist as such an association it may dissolve and sell its assets or may merge or consolidate with another building and loan association, including a Federal-charter savings and loan association. (See Opinion No. 67-059, Opinions of the Attorney General for 1967.)

It is therefore my opinion and you are hereby advised that a building and loan association organized under Chapter 1151, Revised Code, may not merge with either a State-chartered Bank organized under Chapter 1101, et seq., Revised Code, or a National Bank, organized under Title 12, U.S. Code.