

OPINION NO. 70-052

Syllabus:

Although a building and loan association is not authorized to use the term "bond" as a designation of the instrument it gives as evidence of a deposit, it is authorized to issue bonds in the form of debentures by Section 1151.20, Revised Code, and to issue bonds as evidence of money borrowed pursuant to the provisions of Section 1151.28, Revised Code.

To: J. Gordon Peltier, Director, Dept. of Commerce, Columbus, Ohio
By: Paul W. Brown, Attorney General, April 30, 1970

I have your request for my opinion on the following question:

"May a building and loan association authorized to accept deposits under Section 1151.19, Revised Code, issue as evidence of such deposit an instrument using the term 'bond' in the caption or in any other part of the instrument?"

The legislature has not expressly conferred upon building and loan associations the authority to treat and characterize the receipt of deposits and the giving of instruments in evidence thereof as the issuance of bonds.

It must be recognized, however, that specific statutory authority does exist for the issuance of bonds.

Section 1151.20, Revised Code, expressly authorizes building and loan associations to issue debentures. This section reads in part as follows:

* * * * *

"A building and loan association may issue capital notes or debentures at such times, in such amounts, and subject to such terms as the superintendent of building and loan associations in writing approves, but in no event shall such terms require or permit that the holders of such capital notes or debentures be held individually responsible as such holders for any debts, contracts, or engagements of the association."

A general characterization of the meaning of the term "debenture" as one form of the more inclusive term "bond" appears in Ballantine on Corporations (Rev. Ed.) 496, Section 210, and is quoted as follows:

"There are many varieties of bonds, ranging from those secured by a first mortgage or senior lien on property, those secured by a secondary or junior lien, those secured by a pledge of personal collateral

such as stocks or bonds, those secured by the general credit of the corporation and restrictive agreements such as debentures and serial notes, and income bonds sometimes used in reorganization. Debentures are serial obligations or notes representing indebtedness but not secured by any specific mortgage, lien or pledge of security. * * *

Section 1151.20, supra, makes the terms of the debenture form of bond which a building and loan association may issue subject to the written approval of the Superintendent of Building and Loan Associations.

Also, implied authorization to issue bonds is predicated upon the power granted building and loan associations to borrow money under the provisions of Section 1151.28, Revised Code, which reads as follows:

"A building and loan association may borrow money to a total amount not exceeding fifty per cent of the amount paid in by its stockholders and depositors at the time the money is borrowed. Amounts in excess of fifty per cent may be borrowed only with the written approval of the superintendent of building and loan associations."

Building and loan associations are quasi public institutions. See State, ex rel. Bettman v. Court of Common Pleas, 124 Ohio St. 269 (1931). As such, and to the same degree as banks, they have such powers as are expressly conferred on them by statute, or such as may fairly be implied from those expressly given. See the case of Ulmer v. Fulton, 129 Ohio St. 323 (1935), at page 332:

"It is a prevailing rule, in Ohio and elsewhere, that banks and trust companies, though organized primarily for private profit, are of a preeminently public nature and have only such powers as are expressly conferred on them by their charters and by statute, or such as may fairly be implied from those expressly given."

A necessary implication of the power to borrow money is the authority to give the lender an appropriate instrument as evidence of indebtedness incurred, together with the promise to pay the indebtedness in accordance with the terms stipulated. A bond is one of the recognized forms of instrument appropriate for that purpose and is equally as available to the borrower as any other recognized instrument serving that purpose. In my opinion, the power to issue bonds may fairly be implied from the express power granted to borrow money.

I am, therefore, of the opinion and you are so advised that although a building and loan association is not authorized to use the term "bond" as a designation of the instrument it gives as evidence of a deposit, it is authorized to issue bonds in the form of debentures by Section 1151.20, Revised Code, and to issue bonds as evidence of money borrowed pursuant to the provisions of Section 1151.28, Revised Code.