

**OPINION NO. 72-070****Syllabus:**

The Volunteers of America, by maintaining a group home for children in the care and custody of the Montgomery County Children Services Board, and by providing employees who are licensed foster parents as well as occupants of the proposed group home, qualify as a borrower occupying the property as a dwelling, and therefore are entitled to obtain a loan, secured by such property, in the amount of not more than 90 per cent of the value of such property, under Section 1151.297, Revised Code.

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**To: Dennis Shaul, Director, Department of Commerce, Columbus, Ohio**  
**By: William J. Brown, Attorney General, August 22, 1972**

You recently made a request for my opinion as to whether the Gem City Savings Association of Dayton, Ohio, could make a 90 per cent loan to the Volunteers of America of Dayton, Ohio. Your letter states the facts and the question in the following language:

"The Volunteers desire this loan in order to buy a home to assist the Montgomery County Children's Services Board in taking in neglected and abused children from institutions and providing them a comfortable environment.

"The loan would not be used for commercial or other non-residential purposes. In an informal and nonbinding fashion, the Department gave its judgment that since the purposes for

which this home was to be used were residential in character, they therefore, fell within the allowable 90 percent provisions under the applicable law. I am now asking for your formal judgment as to whether this opinion was a correct one. Without a formal opinion, Gen City Savings is unwilling to grant the loan."

In point is Section 1151.297, Revised Code, which reads in part as follows:

"Upon authorization at an annual or special meeting of stockholders, a building and loan association may make loans to members and others upon obligations secured by real estate subject to the procedure of section 1151.292 [1151.29.2] of the Revised Code and the following limitations:

"(A) The amount loaned shall be specified in the security instrument securing the loan and shall not be more than ninety per cent of the value of the real estate or thirty-six thousand dollars, whichever is the lower. Value, as used in the preceding sentence, means the lower of the fair value as fixed by the appraisal or the purchase price if the proceeds of the loan are to finance the purchase of the property.\* \* \*"

The Volunteers of America is a religious, charitable, social work organization, which has entered into an agreement with the Montgomery County Children Services Board to provide care for a group of children living under the legal supervision of the County's Children Services Board. The Board committed themselves to the purchase of care for six children in a group home to be established by the Volunteers of America. Further, the agreement provided that:

- "1. The costs of operation of the home will have periodic review to determine actual per diem cost, at which time, by mutual agreement, the cost of care may be adjusted.
- "2. The houseparents, employees of the Volunteers of America, shall be suitable for and licensed as foster parents by the County's Service Board.
- "3. The child care shall include all living expenses necessary for the children, except medical and casework services, which will be the responsibility of the Children Services Board.
- "4. The Volunteers of America will be responsible for the administration and operation of the home, with close cooperation and consultation with the Children Services Board."

The purpose of such an arrangement is to provide a homelike, family environment to children who might otherwise be forced to remain in an institutional setting.

The Volunteers of America will be the sole owner, occupant

and supervisor of the group home. Employees will be acting as licensed foster parents to the children. To maintain and further expand this program the Volunteers are requesting a 90 per cent loan as provided by Section 1151.297, Revised Code, from the Gem City Savings Association.

To qualify for the 90 per cent rate for loans secured by moderately priced residences, the borrower must meet the requirements of Section 1151.297, which provides in part as follows:

"(B) The real estate pledged to secure the loan shall be improved with a one or two family residential structure, the construction of which has been completed prior to the date the mortgage or deed of trust is executed and prior to the date that any disbursement is made on the loan.

\* \* \* \* \*

"(D) The borrower, including a purchaser who assumes the loan, shall have executed a certification in writing stating that no lien or charge upon such property, other than the lien of the association or liens or charges which will be discharged from the proceeds of the loan, has been given or executed by the borrower or has been contracted or agreed to be so given or executed, and that the borrower is actually occupying the property as a dwelling or that the borrower in good faith intends to do so." (Emphasis added.)

If a borrower does not qualify under this Section, he is eligible only for an 80 per cent loan, under Section 1151.29, Revised Code. Such loan may be secured by real estate which is "improved residential property, a combination of residential and business property, or a farm under cultivation", as provided by Division (A) of that Section.

The agreement indicates that the group home" will be used for residential purposes and not for commercial gain. I believe that the legislative definition of "residential", for purposes of Section 1151.297, has reference to a place of dwelling or abode as distinguished from a place of business. See 18 O. Jur. 2d Domicil, Section 5.

In Hunt v. Held, 90 Ohio St. 280, 283 (1914), in discussing the phrase "for residence purposes only", Justice Newman said:

"\* \* \* The word 'residence' as we view it, is equivalent to 'residential' and was used in contradistinction to 'business.' If a building is used as a place of abode and no business carried on it would be used for residence purposes only whether occupied by one family or a number of families.\* \* \*

The words "residential structure", as used in Section 1141.297, seem to have exactly the same meaning as given them by Justice Newman in the language quoted above. The

program planned by the Volunteers contemplates the use of a home for residential purposes within the statutory definition.

Further, the facts surrounding the group home proposal suggest that a key factor of the program is the maintenance of a relatively small single-family type home with a residential environment for children who, due to institutionalization, often lack this important influence in their social and emotional development.

Therefore, given the purpose, organization, and design of the Volunteers of America's "group home", I believe that it meets the requirement of Section 1151.297 that the property be used for "residential" purposes.

The statute also requires that the Volunteers of America as the borrower be occupying the home as a dwelling. The question might be asked as to whether the Volunteers of America or their employees, who are acting as foster parents and occupant-supervisors of the residence, are occupying the group home. It is well established that corporations, while distinct legal entities, are incapable of acting for themselves. The Citizens Gas & Electric Co. v. Black, 95 Ohio St. 42 (1916). Further, that corporations are "fictions" created by law, and having no will or thought processes of their own, are under the necessity of acting through agents or not at all. State, ex rel. Watson v. Standard Oil Co., 49 Ohio St. 137 (1892). See also 12 O. Jur. 2d Corporations, Section 281.

In Bank v. Burns, 88 Ohio St. 434 (1913), the court, in speaking to the operation of a corporation, noted:

"The agent when duly authorized to act stands in the shoes of his principal for the purposes of the corporation as the principal must be held to stand in the shoes of the agent for the protection of the public.

"There is full and complete merger of identity, a oneness in action and knowledge, of principal and agent. \* \* \*

In the instant case, it is important to emphasize that the "houseparents" are occupying the residence as a dwelling in their capacity as employees and agents of the Volunteers of America, a nonprofit corporation. In my opinion, it follows that the Volunteers of America, through their employees acting in the capacity of houseparents, will occupy the residence in question for dwelling purposes as required by Section 1151.297 (D).

In specific answer to your question it is my opinion, and you are so advised, that the Volunteers of America, by maintaining a group home for children in the care and custody of the Montgomery County Children Services Board, and by providing employees who are licensed foster parents as well as occupants of the proposed group home, qualify as a borrower occupying the property as a dwelling, and therefore are entitled to obtain a loan, secured by such property in the amount of not more than 90 per cent of the value of such property, under Section 1151.297, Revised Code.