

133.

BUILDING AND LOAN ASSOCIATION—STOCK SUBSCRIPTION—NO
STOCK REQUIRED TO BE PAID IN.

SYLLABUS:

The provision of section 8632 of the General Code that at the time of making a subscription to the capital stock of a corporation ten per cent of each share subscribed for shall be payable, is not a condition precedent to the organization of, or to the commencement of business by, a building and loan association. 1912 Annual Reports of Attorney General, Vol. II, page 905, adhered to.

COLUMBUS, OHIO, March 9, 1923.

HON. J. W. TANNEHILL, *Superintendent, Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—YOUR letter of recent date relative to the applicability of section 8632 of the General Code to building and loan associations, was duly received.

Section 8632 is one of the sections of the general corporation law of this state, and is found in Chapter 1 of Division I, Title IX, Part Second, of the General Code. So far as pertinent to the present inquiry, the section provides that "At the time of making a subscription to the capital stock of the corporation, ten per cent on each share subscribed for, shall be payable." It is also provided in section 8737, another section of the general corporation law, that "This chapter does not apply when special provision is made in subsequent chapters of this title, but the special provision shall govern, unless it clearly appears that the provision is cumulative."

Special provision has been made for the organization of, and the commencement of business by building and loan associations in a subsequent chapter of the General Code, to-wit, in Chapter 1 of *Division IV*, Title IX. The first section thereof (9643) provides that such associations may be organized and conducted under the general laws of Ohio relating to corporations, "except as otherwise provided in this chapter", and another (9645) provides that "the organization may be completed and business commenced when five per cent thereof (capital stock) is subscribed," etc. Neither of the sections just referred to, nor any other section of the building and loan laws, contains any direction or mandate that any part of the five per cent of stock required to be subscribed, shall be paid in as a condition precedent to organization or to the commencement of business, and in this respect there is material departure from the provisions of the general corporation law hereinbefore referred to. See *Parkside Cemetery Ass'n v. Traction Co.*, 93 O. S. 161; *Queen City Telephone Co. v. Cincinnati*, 73 O. S. 64. On the contrary, section 9645 expressly and specifically authorizes building and loan associations to organize and commence business when five per cent of its capital stock has been *subscribed*.

The question you have submitted was before this department in a different form over ten years ago. See 1912 Annual Reports of Attorney General, Vol. II, page 905. In that opinion, it was, among other things, said with respect to subscriptions to the capital stock of building and loan associations:

"There is no provision of statute that any amount of said stock subscribed shall be paid in. * * * The last sentence in section 9643, General Code, exempts building and loan associations from these require-

ments (that is, the requirements of section 8632 G. C.). * * * Building and loan associations are organized under the provisions of a special act, which act prescribes that before commencing business five per cent of the capital stock shall be subscribed. * * * The expression in section 9645, General Code, that five per cent of the capital stock shall be subscribed before business shall be commenced, excludes conditions which are not expressed. It is my conclusion that the provision of said section 9645 G. C. as to the subscription of stock of building and loan associations does not require that any part thereof shall be paid into the treasury of the company or association before such association shall commence business. Such subscription, however, should be made in good faith and by persons who have the ability to pay therefor, or who have a reasonable expectation of paying therefor."

As above indicated, the ruling of the former Attorney General has been in force for several years and has been accepted and acted upon as a proper interpretation of the law. During that period of time the General Assembly, although in general and extraordinary session several times, has not seen fit to amend the law so as to change the force or effect of the ruling, and until legislative action is taken you are advised that the former opinion should be adhered to.

Respectfully,

C. C. CRABBE,

Attorney General.

134.

NUISANCE—COMPLAINT—ORDER AND FINDING IN ACCORDANCE WITH SECTIONS 1249, 1250 and 1251 G. C.—MAY PROCEED UNDER SECTION 1249 WHEN DISTRICT HAS BEEN CREATED BY PROPER AUTHORITIES.

SYLLABUS:

A complaint, order and finding in accordance with sections 1249, 1250, and 1251, General Code of Ohio, is applicable when a municipality is discharging sewage or waste into a well defined underground water course and is thereby creating a nuisance detrimental to public health and comfort.

The state board of health may proceed under sections 1249, 1250 and 1251, General Code of Ohio, when a water and sewage district has been created by the county commissioners or other proper authority, and the plans for same have been submitted to them for their approval.

COLUMBUS, OHIO, March 9, 1923.

HON. JOHN E. MONGER, *Director of Health, Columbus, Ohio.*

DEAR SIR:—We are in receipt of your letter of recent date, as follows:

"The sewage and surface drainage from the city of Bellevue is disposed of by discharge into sink holes or drilled wells reaching a cavernous limestone formation underlying that vicinity. Available evidence indicates that the flow of underground water passes in a general northerly direc-