

## OPINION NO. 75-033

## Syllabus:

A state chartered building and loan association does not have authority under R.C. 1151.343, by reference to Sections 1321.51 to 1321.60 of the Revised Code, to make loans upon the security of personal property acquired by a borrower with the proceeds of a loan transaction.

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To: Roger W. Tracy, Jr., Supt. Building and Loan Assoc., Dept. of Commerce,  
Columbus, Ohio

By: William J. Brown, Attorney General, May 16, 1975

I have before me your request for an opinion in which you pose the following questions:

"1. Does division (B) (1) of section 1151.343 of the Revised Code authorize a state-chartered building and loan association to make any loan which a second mortgage lender would be authorized to make

under sections 1321.51 to 1321.60 of the Revised Code, known as Ohio's Second Mortgage Lending Act?

"2. Does division (B)(1) of section 1151.343 of the Revised Code authorize a state-chartered building and loan association to make loans upon the security of personal property acquired by a borrower with the proceeds of a loan transaction?"

Sections 1151.29 to 1151.342 of the Revised Code provide a series of terms, restrictions, and procedures limiting the lending authority for state chartered building and loan associations by specific regulation of the types of loans and amounts of money which such institutions may provide. However, the General Assembly recently expanded the lending authority of such associations by enacting Amended Sub. H.B. No. 366, effective November 22, 1973 (R.C. 1151.343).

R.C. 1151.343(B)(1) specifically expands the lending authority to permit second mortgage lending and reads as follows:

"(B) An association may make any of the following loans provided that it shall not charge, collect, or receive interest, finance charges and penalties in excess of the maximum rate or amount which competing lenders chartered, licensed, or authorized to do business in this state are permitted to charge by law for the same type of loan:

"(1) A second mortgage loan made pursuant to sections 1321.51 to 1321.60 of the Revised Code." (Emphasis added.)

Sections 1321.51 to 1321.60 of the Revised Code, known as Ohio's Second Mortgage Lending Act, authorize the making of loans secured by a mortgage which is other than a first lien on a borrower's real estate - second mortgage loans. That Act also authorizes the making of loans secured by a security interest in the personal property which the borrower is to acquire with the proceeds of the loan - personal property loans. This is apparent from the language of R.C. 1321.52 which provides in pertinent part:

"No person who, on behalf of himself or any other person, advertises, solicits, or holds himself out as willing to take as security for a loan a mortgage on a borrower's real estate which is other than a first lien on such real estate shall engage in the business of lending his own or another's money, credit, or choses in action to any borrower and take in his own or any other person's name as security for the loan a mortgage on the borrower's real estate which is other than a first lien on such real estate or a security interest in any personal property of the borrower, without first having obtained a certificate of registration from the division of securities." (Emphasis added.)

See also 1966 Op. Att'y Gen. No. 66-038.

Inasmuch as the language of recently enacted R.C. 1151.343 (B)(1) specifically authorizes only second mortgage loans but also makes reference to the entire Second Mortgage Lending Act, the issue of concern here is whether a state chartered building and loan association is authorized pursuant to R.C. 1151.343(B)(1) to make both second mortgage loans and personal property loans. Resolution of this issue will dispose of both of the questions you have posed.

R.C. 1151.343(B)(1) does not authorize state chartered building and loan associations to make loans secured only by a security interest in the personal property to be acquired with the proceeds. This conclusion is based upon the elemental maxim of statutory construction expressio unius est exclusio alterius: the mention of one thing implies the exclusion of all others. In the case of R.C. 1151.343(B)(1) the General Assembly obviously expanded the lending authority of state chartered building and loan associations. However, it did so only with respect to a single lending activity - second mortgage lending. No mention of personal property loans or security interest lending was made and therefore no authority for that lending activity has been provided. The reference, in section 1151.343(B)(1), to sections 1321.51 to 1321.60 is not authorization for personal property loans but is merely a provision for applying previously established procedural safeguards to those state chartered building and loan associations which engage in the newly authorized second mortgage lending activity. E.g., R.C. 1321.58 (which requires detailed and written disclosure of the terms, conditions and nature of the transaction) and R.C. 1321.60 (which prohibits false, misleading and deceptive loan advertisements).

To conclude otherwise as to personal property lending authority would be to insert additional language without justification and against the most basic rules of statutory construction. See Wheeling Steel Corp. v. Porterfield, 24 Ohio St. 2d 24 (1970); State, ex rel. Shaffer v. Defenbacher, 148 Ohio St. 465 (1947); State, ex rel. Mooney v. Ferguson, 142 Ohio St. 279 (1943). Accordingly, I cannot suggest that the General Assembly intended by a mere reference to the Second Mortgage Lending Act to specifically authorize a previously prohibited lending activity for state chartered building and loan associations. See, R.C. 1.49(F). There had earlier been no authority in Chapter 1151 for such institutions to engage in personal property lending and the enactment of R.C. 1151.343 does not now provide that authority.

In specific answer to your questions, it is my opinion and you are so advised that a state chartered building and loan association does not have authority under R.C. 1151.343, by reference to Sections 1321.51 to 1321.60 of the Revised Code, to make loans upon the security of personal property acquired by a borrower with the proceeds of a loan transaction.