

**OPINION 65-11****Syllabus:**

1. There is no authority under Chapter 1151, Revised Code, for a building and loan association with the prior approval of the superintendent of building and loan associations to purchase all or substantially all of the shares of another association which is to be immediately dissolved and to assume the operation of the dissolved association as a branch;

2. A building and loan association must directly negotiate for the purchase of all of the assets of a dissolving corporation and may acquire such assets and assume the operation as a branch only upon the written approval of the superintendent under Section 1151.05, Revised Code.

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**To: Lyle L. Herbold, Superintendent of Building and Loan Associations,  
Ohio Departments Building, Columbus, Ohio**

**By: William B. Saxbe, Attorney General, January 26, 1965**

Your request for my opinion is as follows:

"In order to properly administer the affairs of Building and Loan Associations chartered by the State of Ohio, I desire to submit to you for your Opinion the following question.

"In view of the provisions of Section 1151.34 of the Revised Code, may a savings and loan association chartered under the laws of the State of Ohio, with the prior approval of the Division, purchase substantially all of the capital stock of another Ohio association, providing the purchase is immediately followed by a dissolution of the company purchased?"

It is my understanding that this request has been raised for two primary reasons. One reason is that the sale of stock would better insure the seller of capital gains tax treatment and thereby avoid the possibility that reserve accounts would be considered taxable income upon the dissolution of an association and the distribution of remaining assets. Since reserve accounts may be used as a means of deferring corporate income tax, it is recognized that income tax consequences may attach upon the release of all or part of the reserves to undivided profits upon the dissolution of the corporation. Tax considerations must relate, however, to those procedures as authorized by the law regulating building and loan associations.

The second reason prompting this inquiry is the active market in the sale of building and loan charters and the apparent difficulty for established associations to move quickly enough to acquire the assets and assume the operation of an association which is dissolving or to compete with the premium prices the current market is producing. The unusual competitive market has been created in those areas which have been sufficiently saturated with this type of financial institution and where consequently new charters or new branch operations are not being approved by the superintendent.

Because of the quasi-public character of building and loan associations, the legislature enacted special laws for their regulation and control. Section 1151.02, Revised Code, provides that only in absence of specific statutes are such associations governed by the general corporation laws of this state. It is therefore necessary that we consider whether the law regulating an association under Chapter 1151, Revised Code, provides for the investment of its assets and whether it provides a specific method for voluntary dissolution and the establishment of a branch operation.

Pursuant to Section 1151.34, Revised Code, the legislature has restricted the investment of idle funds and assets of an association to certain described bonds, interest-bearing obligations, notes, debentures, home mortgages and securities acceptable to secure government deposits, and, in addition, authorizes the deposit of idle funds in financial institutions as therein described. There is no provision for the investment of the assets of an association in stock of any corporation with the exception of investment in the stock of a federal national mortgage association which is specifically authorized under Section 1151.34.1, Revised Code. It is quite evident therefore that there is neither expressed or implied power in an association to invest in stock of a corporation organized for a like purpose.

The term "investment" has been generally defined as placing money into property to be held with some measure of permanence and with an idea to gain or profit. Lumberman's Indemnity Exchange v. State, 193 Pac. 217; In re Curtis, 60 Atl. 240. An investment can be either in the ownership of another corporation or in assets for permanent use in a business. The fact that the purchase of stock herein contemplated is only an intermediate step in the acquisition of the assets of a dissolved association does not make it any less an investment and one which is not authorized under Section 1151.34, supra.

It is necessary therefore to determine if there is any other statutory basis for purchasing the stock of an association for the purpose stated. Chapter 1151, supra, specifically authorizes the purchase of various assets by an association. Section 1151.27, Revised Code, authorizes the acquisition of real estate to be used in the transaction of the business and Section 1151.42, Revised Code, authorizes the purchase of loans. Of course, an association could purchase under its implied powers any equipment and assets necessary for the transaction of its business in its principal office or established branches. There is nothing, however, under these specific statutes or any other provisions of Chapter 1151, supra, that indicates that the legislature contemplated the purchase of stock in another association regardless of the purpose. In the case of Standard Savings and Loan v. Aldrich, 163 F. 216, the court held that under the most liberal view implied and incidental powers a Michigan building and loan association could not purchase stock in another association. On the basis of that conclusion, the court held that the association could not therefore qualify as a member of another association for purposes of obtaining a loan.

As a quasi-public corporation, an association does not have the unqualified right to voluntarily dissolve nor does it have the unqualified right to expand its operation into one or more offices or branches. Both such actions require approval of the superintendent pursuant to Sections 1151.45 and 1151.05, Revised Code, respectively.

Section 1151.45, supra, provides for the voluntary dissolution of a building and loan association and the application of the general corporation law as follows:

"A building and loan association may dissolve by a majority vote of the stock entitled to be voted under its constitution. Such vote shall be consistent with section 1151.20 of the Revised Code, and such dissolution shall be subject to the contract rights of the association's borrowers and the vested rights of its members.

"No such association shall dissolve until after it has filed an application to dissolve with the superintendent of building and loan associations and said superintendent has consented in writing to such dissolution and certified, upon examination of said corporation, that it is in a safe and sound condition.

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"After the filing of said certificate, all proceedings relating to the dissolution of such association shall be governed by section 1701.87 and 1701.88, inclusive, of the Revised Code."

In the case of State, ex rel. Bettman, Attorney General v. Court of Common Pleas of Franklin County, 124 Ohio St., 269, the court held that the provisions for possession and involuntary dissolution of a building and loan association set forth in Chapter 1157, Revised Code, provided the exclusive remedy and procedures that must be followed in all

such cases. The same rationale in my opinion can be equally applicable to the method of voluntary dissolution. Section 1151.45, supra, does not specifically authorize one association to acquire the stock of another association as a step in the dissolution of the association whose stock is purchased, and such authority can not be implied therefrom.

Section 1151.05, supra, provides for the approval of a branch office as follows:

"No building and loan association shall establish more than one office, or maintain branches other than those established before July 3, 1923, except with the approval of the superintendent of building and loan associations previously had in writing."

Pursuant to this statute an association cannot purchase, build or otherwise establish an office or branch for the operation of its business apart from its principal office without approval. The fact that an association may, with approval, establish another office or branch does not give it the right to pursue any means to accomplish this purpose nor does it give the superintendent the right to approve any or all means for setting up such an operation. The approval of the superintendent goes to the establishment of the office or branch and not to the purchase of stock in another corporation as a step in the acquisition of another office or branch. The fact that the legislature failed to grant this authority in providing for the investment of funds and the voluntary dissolution of an association in my opinion precludes the purchase of stock in another corporation as a proper means for establishing an office or branch.

If such authority could be implied, I see no basis upon which the superintendent could require the purchase of all or substantially all of the stock of another association as contracted with any lesser controlling interest which could effect the dissolution and distribution of assets. The obvious conflict of interests between the association and the minority shareholders and the problems that could arise therefrom strengthens my conclusion that this question is a matter for legislative determination.

The board of directors of a dissolving corporation, either with approval of the stockholders, Section 1701.88, Revised Code, or by authority vested in them by the articles of incorporation, Section 1151.63, Revised Code, may sell all or part of the assets to another corporation. There is nothing to preclude a building and loan association from purchasing any asset which I have indicated it is authorized by law to purchase. Furthermore, there is nothing to preclude a building and loan association from purchasing all of the assets and assuming the operation of the business as a proper means to establish another office or branch provided approval in writing is received from the superintendent. The question of whether the association can meet the competitive bids of other interested purchasers is a matter to be determined by negotiation between the parties.

Therefore, it is my opinion and you are hereby advised:

1. There is no authority under Chapter 1151, Revised Code, for a building and loan association with the prior approval of the superintendent of building and loan associations to purchase all or substantially all of the shares of another association which is to be immediately dissolved and to assume the operation of the dissolved association as a branch;

2. A building and loan association must directly negotiate for the purchase of all of the assets of a dissolving corporation and may acquire such assets and assume the operation as a branch only upon the written approval of the superintendent under Section 1151.05, Revised Code.