

OPINION NO. 66-115**Syllabus:**

1. A building and loan association may not, by means of a supplemental extension agreement, convert an unamortized loan granted under subsection (D), Section 1151.29, Revised Code, into an amortized loan as is provided for in subsection (E), Section 1151.29, Revised Code.

2. A building and loan association which grants a mortgage loan under subsection (E), Section 1151.29, Revised Code, may not make a provision that the first installment be deferred more than six months.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, June 29, 1966

Your request for my opinion reads as follows:

"Our Division of Building and Loan Associations has requested us to secure your opinion relative to the following facts and law:

"A state chartered building and loan association grants a construction loan under the provisions of Sections 1151.29 (D), for not more than 80% of the fair value of the security, and for not longer than 18 months, with no provision for amortization. Subsequently, but prior to the due date of the note, the parties enter into a supplemental agreement

whereby repayment terms are established in accordance with the provisions of Section 1151.29 (E).

"Based upon the aforesaid facts, your opinion is requested concerning these questions:

"1. Is the subsequent agreement sufficient and proper under Ohio law to remove the loan from the statutory provisions of Section 1151.29 (D) under which it was originally granted and have it comply with the provisions of Section 1151.29 (E), without the execution of a new note and mortgage?

"2. May the association grant a loan under Section 1151.29 (E) for the purpose of constructing the security property, and defer the first principal payment for a period of time up to 18 months, which the supplemental agreement provides for, in effect."

Section 1151.29, Revised Code, sets out the general lending authority for building and loan associations and provides in pertinent part:

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"(D) Loans may be granted without provision for amortization; but no such loan shall be made for a term exceeding five years, or in an amount exceeding sixty per cent of the fair value of such real estate as determined by the appraisal, except that a loan may be granted for not more than eighty per cent of such fair value if the term is not longer than eighteen months. Interest on all loans granted without provision for amortization shall be payable not less often than semi-annually.

"(E) All other loans shall be payable in weekly or monthly installments sufficient to retire the loan within thirty years except that loans may be granted for thirty years or less if provision is made for quarterly or semiannual installments sufficient to retire the loan within thirty years." (Emphasis added)

These subsections as set out above are the only general provisions pertaining to amortization of loans. Subsection (D), Section 1151.29, supra, specifically allows for certain loans to be granted without amortization; however any unamortized loans must meet the specific requirements as set out by the General Assembly and shall be for the terms prescribed only.

Inasmuch as subsection (E), Section 1151.29, supra, begins with the terminology "all other loans" this wording itself would exclude the unamortized loans which are provided for by subsection (D), Section 1151.29, supra. This subsection provides for long term repayment with payments to be made in regular installments payable weekly, monthly, quarterly or semiannually.

The intent of the legislature seems to be plain. A building and loan association may grant loans pursuant to either of the subsections as set out; however, an express modification or extension agreement, which, in effect, extends the payment of a mortgage loan of a specific type beyond the maximum period for which that loan could have been made at the time of the original mortgage would not be legally permissible.

Of course the association may avoid the legal time limit barrier by the simple, but more expensive, expedient of refinancing the indebtedness with a new mortgage, the legal limit of the new mortgage to be measured from the time the refinancing is made. While it is recognized that an identical result is accomplished by the two different procedures, the fact remains that the refinancing procedure is permissible under the law and the extension is not.

The foregoing reasoning applies equally to your second question and compels a negative answer. Inasmuch as, under normal circumstances, an association may not convert an unamortized loan into an amortized loan by means of a supplemental extension agreement, the same result may not be reached by an agreement to defer the first payment for eighteen months on a loan granted pursuant to subsection (E), Section 1151.29, supra, when the statute provides for installment payments to be made at least semiannually.

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

1. A building and loan association may not, by means of a supplemental extension agreement, convert an unamortized loan granted under subsection (D), Section 1151.29, Revised Code, into an amortized loan as is provided for in subsection (E), Section 1151.29, Revised Code.

2. A building and loan association which grants a mortgage loan under subsection (E), Section 1151.29, Revised Code, may not make a provision that the first installment be deferred more than six months.