OPINION NO. 73-039

Syllabus:

A municipality may not enact an ordinance prohibiting a savings and loan association, which has contracted with a buyer to provide financing for a purchase of real estate, from disbursing the funds it holds in escrow until the unpaid water charges on the property have been settled.

To: Wallace A. Boesch, Supt., Division of Building and Loan Associations, Columbus, Ohio

By: William J. Brown, Attorney General, May 3, 1973

Your letter requesting an opinion states the facts and poses the questions as follows:

> The situation has arisen wherein a building and loan association, acting as escrow agent in closing a real estate transaction where it has made the mortgage loan, is required by municipal ordinance to furnish certain documents before the transaction between seller and buyer can be completed. The ordinances prohibit the escrow agent from disbursing any funds until the required documentation is furnished. Since the effect of such an ordinance is to legislate the actions of Ohio building and loan associations, we request your opinion as to the constitutionality and legality of this type of ordinance, specifically as follows:
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> 1. May a municipality adopt an ordinance requiring banks and savings and loan associa-

> tions to withhold the filing of real estate escrows until it complies with a municipal ordinance requiring the escrow agent, which may not be a resident of the municipality, to see to the payment of the municipality's unpaid water charges, where no lien for such charges is conferred by law?
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> 2. May a municipality by ordinance establish restrictions on the powers of a building and loan association, not related to police and sanitary regulations, where Chapter 1151, Ohio Revised Code, establishes the rights, powers, and limitations on building and loan associations?

To begin with, I will assume for the moment, that the municipality in question does not have a charter, and that the ordinance in question is not an exercise of the police power. Such a municipality may not adopt an ordinance which is in conflict with general state law. In Leavers v. Canton, 1 Ohio St. 2d 33, 37 (1964), the Supreme Court said:

> An ordinance passed by a noncharter city, which is not a police regulation but is concerned with local self-government, is invalid where such ordinance is at variance with a state statute. * * *

See also State, ex rel. Pettit v. Wagner, 170 Ohio St. 297, 302 (1960); Morris v. Roseman, 162 Ohio St. 447 (1954); Opinion No. 72-029, Opinions of the Attorney General for 1972.

The ordinance which you describe is designed to enable the municipality to collect unpaid water charges on a property by requiring a savings and loan association to see that they are paid before it can carry out its part in a contract between a buyer and a seller for transfer of title to the property. The general law of the state, however, requires the municipality to "look directly to the owner of the property" for unpaid water rents. Provision for assessment and collection of water rents is made in R.C. 743.04, which reads as follows:

> The director of public service may, for the purpose of paying the expenses of conducting and managing the water works of a municipal corporation, assess and collect a water rent of sufficient amount and in such manner as he deems most equitable from all tenements and premises supplied with water. When more than one tenant or water taker is supplied with one hydrant or off the same pipe, and when the assessments therefor are not paid when due, the director shall look directly to the owner of the property for so much of the water rent as remains unpaid which shall be collected in the same manner as other city taxes. (Emphasis added.)

In my opinion the ordinance in question conflicts with R.C. 743.04.

Nor do I think the result should be any different if this particular municipality is operating under the charter form of government. The objective of the ordinance is, in a broad sense, the promotion of the public good of the city by collection of its

proper revenues, and I assume that there must be some penalty for lack of compliance. The ordinance is, therefore, an exercise of the police power. Williams v. Scudder, 102 Ohio St. 305, 315 (1921); State, ex rel. Ach v. Braden, 125 Ohio St. 307, 311-312 (1932); State, ex rel. Zugravu v. O'Brien, 130 Ohio St. 23, 25-26 (1935); Wilson v. Zanesville, 130 Ohio St. 286 (1935); Akron v. P.U.C., 149 Ohio St. 347, 355-357 (1948).

Even under the Home Rule amendment to the Constitution, and in cities which operate under a charter, the exercise of the police power is subject to the general law of the state. Article XVIII, Section 3, Ohio Constitution, which conferred the power of Home Rule in 1912, reads as follows:

> Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

At the same time, the right to adopt a charter was conferred by Article XVIII, Section 7, which provides:

> Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

With regard to the Home Rule amendment, the Supreme Court said, in State, ex rel. Canada v. Phillips, 168 Ohio St. 191, 197 (1959):

> As we view it, this constitutional provision first gives municipalities "authority to exercise all powers of local self-government," and then, with respect to some of those powers, i.e., the power "to adopt and enforce * * * local police, sanitary and other similar regulations," it limits the powers to adopt such regulations to such "as are not in conflict with general laws."

With regard to charter cities, the Court said, in Leavers v. Canton, supra, at page 37:

> Any ordinance dealing with police regulations passed by either a charter or non-charter city, which is at variance with state law, is invalid. * * *

And in State, ex rel. Klapp v. P. & L. Co., 10 Ohio St. 2d 14, 17 (1967), the Court said:

> * * * It is well settled that police and similar regulations of a municipality must yield to general laws of statewide scope and application * * *.

Since, as has already been seen above, the ordinance is in conflict with the general law of the state, I conclude that it is invalid.

Furthermore, in a previous Opinion rendered at your request, I said (Opinion No. 72-100, Opinions of the Attorney General for 1972), "It is settled that building and loan associations are quasi-public institutions, and that the state has pre-empted the regulation of such associations." In that proposition I relied upon State, ex rel. Dettman v. Court of Common Pleas, 124 Ohio St. 269, 274-276 (1931); State, ex rel. Crabbe v. Massillon Savings & Loan Co., 110 Ohio St. 320, 325-326 (1924); Hagerman v. Ohio Building and Savings Association, 25 Ohio St. 186, 203-204 (1874); State, ex rel. Day v. Superior Savings & Loan Co., 25 Ohio St. 2d 79 (1971). The Supreme Court has made it clear that local authorities may not legislate so as to conflict with state statutes in areas in which the state has pre-empted the right to regulate. In Cleveland Electric Illuminating Co. v. Painesville, 15 Ohio St. 2d 125, 129 (1968), the Court said:

> The power granted under Section 3 of Article XVIII relates to local matters and even in the regulation of such local matters a municipality may not infringe on matters of general and state-wide concern.
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> The test as to matter of local self-government is set forth in the opinion of Beachwood v. Board of Elections of Cuyahoga County, 167 Ohio St. 369, 371:
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> "To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly."
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> Thus, even if there is a matter of local concern involved, if the regulation of the subject matter affects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest.

Just as regulation of public utilities affects the general public of the state as a whole more than it does the local inhabitants and thus is a matter of state-wide concern, so also with the regulation of savings and loan associations. In an area of state-wide concern, local ordinances are invalid if they conflict with a state statute rather than complement it. In this case, the municipal ordinance is not complementary as that term is used in Cleveland v. Raffa, 13 Ohio St. 2d 112 (1968). Rather, the municipal ordinance is an attempt to impose a restriction on savings and loan associations which the General Assembly has expressly forbidden. The ordinance is, therefore, in direct conflict with R.C. 743.04 and is invalid. The ordinance is also in conflict by implication with R.C. Chapter 1151.

In specific answer to your questions it is my opinion, and

you are so advised, that a municipality may not enact an ordinance prohibiting a savings and loan association, which has contracted with a buyer to provide financing for a purchase of real estate, from disbursing the funds it holds in escrow until the unpaid water charges on the property have been settled.