OPINION NO. 73-098

Syllabus:

A municipality may not enact an ordinance prohibiting a building and loan association, which has contracted with a buyer to provide financing for purchase of a dwelling, from disbursing the funds it holds in escrow until the seller has obtained a certificate of inspection of the dwelling.

To: Wallace A. Boesch, Supt., Division of Building and Loan Associations, Columbus, Ohio
By: William J. Brown, Attorney General, October 3, 1973

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

> A municipal ordinance prohibits an escrow agent from disbursing funds in a real estate transaction involving sale of a dwelling before a certificate of inspection issued by the municipality has been furnished by the seller of the property. The certification lists, among other things, any building codes or fire code violations which may exist. The effect of such an ordinance is to legislate activities of a building and loan association, organized under Chapter 1151 of the Revised Code, when it is acting as escrow agent in closing a real estate transaction wherein it has made the mortgage loan. Therefore we request your opinion specifically as follows:
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> 1. When a building and loan association, organized under Chapter 1151, Ohio Revised Code, is acting as escrow agent, may a municipality regulate its activities by prohibiting it from disbursing any funds prior to obtaining a certificate of inspection of real estate required in such municipality?
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> 2. May a municipality similarly regulate the activities of a building and loan association which does not have an office located within the municipality?

3. May a municipality prohibit certain activities of a building and loan association's handling of escrows when such escrow activities are conducted in the normal course of the association's business as permitted by Ohio law and the Superintendent of Building and Loan Associations?

The problem here is quite similar to another on which I recently rendered an Opinion at your request. Opinion No. 73-039, Opinions of the Attorney General for 1973. There, the question was the propriety of a municipal ordinance which required a building and loan association to see to the payment of delinquent water charges on certain real estate, and to furnish documentary proof of such payment, before disbursing funds which it held in escrow pending a sale of the real estate. I held that that ordinance was in direct conflict with general state laws preempting the regulation of building and loan associations, since it required the association to collect unpaid water charges for the municipality.

The situation you now present is different in that no affirmative duty is placed on the association by the ordinance. The certificate of inspection must be obtained from the municipality by the seller of the property. The ordinance only prohibits the association from disbursing funds held in escrow until the seller has obtained the certificate.

I fail to see, however, how this distinction should require any different result from that reached in Opinion No. 73-039. The general laws of the state contain provisions regulating the disbursement of funds by building and loan associations. R.C. 1151.297; see also R.C. 1151.192. Both here, and in the prior Opinion, a municipal ordinance was passed to regulate the disbursement of association funds for the purpose of enforcing other municipal laws. Since the object of the ordinances was the promotion of the public good, they were, as I pointed out before, an exercise of the police power of the municipality. The language used in Opinion No. 73-039 is applicable here:

> * * *The Court said, in Leavers v. Canton, [1 Ohio St. 2d 33,37 (1964)]:
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> > Any ordinance dealing with police regulations passed by either a charter or non-charter city, which is at variance with state law, is invalid. * * *
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> And in State, ex rel. Klapp v. B. & L. Co., 10 Ohio St. 2d 14, 17 (1967), the Court said:
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> > * * *It is well settled that police and similar regulations of a municipality must yield to general laws of statewise 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.

Here, as in the other Opinion, the municipal ordinance

conflicts with general state law, rather than complements it as that term is used in Cleveland v. Baffa, 13 Ohio St. 2d 112 (1968). The effort to enforce the municipal building code should be directed against the seller of the property rather than against the building and loan association.

In specific answer to your questions it is my opinion, and you are so informed, that a municipality may not enact an ordinance prohibiting a building and loan association, which has contracted with a buyer to provide financing for purchase of a dwelling, from disbursing the funds it holds in escrow until the seller has obtained a certificate of inspection of the dwelling.