

number, which, together with a number of other reservoir land leases, you have submitted for my examination and approval.

By the enclosed leases above referred to, which have been executed by the Conservation Commissioner, there are leased and demised to the respective lessees therein named, subject to the conditions and restrictions therein provided, and for terms of fifteen years each, certain parcels of land adjacent to the waters of Indian Lake, which parcels of land are more particularly described in said respective leases.

The leases here in question, designated with respect to the names of the respective lessees therein and the appraised valuations of the several parcels of land covered by said leases, are the following :

| <i>Lessee.</i>                           | <i>Valuation</i> |
|------------------------------------------|------------------|
| Lulu Reel.....                           | \$550 00         |
| J. C. Wagstaff.....                      | 1,000 00         |
| J. Clyde Wagstaff.....                   | 483 34           |
| J. C. Wagstaff and Lula M. Wagstaff..... | 400 00           |
| J. C. Wagstaff and John Kohler.....      | 600 00           |
| H. J. Wagstaff.....                      | 1,066 67         |
| E. G. Harmon.....                        | 100 00           |
| William Babbert.....                     | 100 00           |
| Grover McDonald.....                     | 100 00           |

Each and all of the above mentioned leases are executed under the authority of Section 471, General Code, as amended by the Conservation Act, passed by the 88th Assembly.

Upon examination of the provisions of said leases, I find that the same are in conformity with the provisions of said section of the General Code and with other statutory provisions relating to leases of this kind.

Said leases, and each of them, are accordingly hereby approved by me as to their legality and form, which approval is evidenced by my authorized signature on said leases, and upon the duplicate and triplicate copies thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2028.

BUILDING AND LOAN ASSOCIATIONS—WHEN ANNUAL FEES TO BE OMITTED—HOW SUCH FEES CONSTITUTING SPECIAL FUND, PAID OUT—WHO DETERMINES SUFFICIENCY OF FUNDS IN ORDER TO OMIT SAID ANNUAL FEES.

**SYLLABUS:**

1. *Under the provisions of Section 691, General Code, when at the close of business on June 30 of any year there is on hand in the fund provided in said section a sufficient amount for maintaining the Division of Building and Loan Associations for the ensuing year, the fees provided for filing the annual reports of building and loan associations to be paid at the time of filing such reports may be omitted for such ensuing year.*

2. *Money on hand in the fund provided in Section 691, General Code, may be paid*

out only pursuant to appropriation by the General Assembly, as provided in Section 22, Article II of the Constitution.

3. *The duty of determining the sufficiency of such funds is placed in the first instance upon the Superintendent of Building and Loan Associations, subject to the approval of the Director of Commerce, who is charged with the administration of the Division of Building and Loan Associations.*

COLUMBUS, OHIO, June 25, 1930.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Under the laws of Ohio every building and loan association doing business in this state is required to file annually at the end of each fiscal year or within forty days thereafter a full and detailed report in writing of the affairs and business of the association for the preceding year, showing its financial condition at the end thereof, and to pay to the state at the time of filing such annual reports certain fees. Section 691 of the General Code of Ohio provides that:

‘All such fees collected shall be paid into the state treasury to the credit of a fund for the use of the Department of Building and Loan Associations, and shall be used upon the order of the Superintendent of Building and Loan Associations, and shall not be used or paid out or appropriated for any other purpose. In any year when in the opinion of the Superintendent of Building and Loan Associations the amount of such fund on hand at the close of business, June 30, is sufficient for maintaining the Department of Building and Loan Associations for the ensuing year, then the fees provided for in this section to be paid at the time of the filing of annual reports shall be omitted for such year.’

Since said Section 691 of the General Code became a law a record has been kept of all ‘such fees’ collected and paid into the state treasury. A record has also been kept of the expenses of maintaining and operating the Department of Building and Loan Associations, all such expenses being paid out of appropriations made by the General Assembly. The total of ‘such fees’ so received exceeds the total expenditures so made, and on December 31, 1929, the excess of such fees over said expenditures, if available, would be sufficient for maintaining the Department of Building and Loan Associations for the year commencing January 1, 1930. A question arises, however, as to whether or not such excess is available for use upon the order of the Superintendent of Building and Loan Associations.

In consideration of this matter it must also be remembered that the Legislature has appropriated money for the maintenance and operation of the Department of Building and Loan Associations for the year 1930.

Will you please advise me under what circumstances the fees provided for in Section 691 of the General Code may be omitted? If such fees can be omitted at all can they be omitted for a year other than a year commencing July 1st? If such fees can be omitted who has the right to order or authorize such omission,—the Superintendent of Building and Loan Associations or the Director of Commerce?”

Section 682, General Code, provides as follows:

“Every building and loan association doing business in this state, annually

at the end of each fiscal year or within forty days thereafter shall make a full and detailed report in writing of the affairs and business of the association for the preceding year, showing its financial condition at the end thereof."

The fee to accompany the annual report required by the foregoing section and the disposition thereof is provided for in Section 691, General Code, which provides insofar as is pertinent as follows:

" \* \* \*

Every building and loan association doing business in this state, whether foreign or domestic, shall pay to the Superintendent of Building and Loan Associations, for filing each annual report, at the time said annual report is filed, the sum of ten dollars, and in addition thereto, one-eightieth of one per cent of its assets, as shown in such report unless omitted as hereinafter provided. All such fees collected shall be paid into the state treasury to the credit of a fund for the use of the Department of Building and Loan Associations, and shall be used upon the order of the Superintendent of Building and Loan Associations, and shall not be used or paid out or appropriated for any other purpose.

In any year when in the opinion of the Superintendent of Building and Loan Associations the amount of such fund on hand at the close of business, June 30, is sufficient for maintaining the Department of Building and Loan Associations for the ensuing year, then the fees provided for in this section to be paid at the time of the filing of annual reports shall be omitted for such year."

These provisions of Section 691 were enacted in 1923, 110 O. L. 62, 64. Since that date, I am advised that the fees under consideration have been credited to a separate fund as therein provided. It was obviously the intention of the Legislature in providing for the fees under consideration that the Division of Building and Loan Associations should be at least in part, self-sustaining, and that these fees should not be used for any other purpose than the maintenance of that division. Such being the case, in the event it should be determined, as provided in this section, that there is a sufficient amount in the building and loan association fund on hand at the close of business June 30 to maintain the Division of Building and Loan Associations for the ensuing year, there is no authority for collecting the fees therein provided for filing annual reports during the ensuing year.

With respect to the period of time during which the fees here under consideration may be omitted, it seems manifest that the reference in Section 691, supra, is to the ensuing year beginning after the close of business on June 30 of that year when it has been determined that there is sufficient money on hand in the building and loan association fund for maintaining the Division of Building and Loan Associations for the period of one year beginning July 1 and ending June 30 of the following year.

You also raise the question as to whether or not these funds are available for use upon the order of the Superintendent of Building and Loan Associations. Since these fees are paid into the state treasury, they may only be paid out pursuant to appropriation by the Legislature under Section 22, Article II of the Constitution, which provides:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

You next inquire as to the officer who may authorize such omission. Section 691, *supra*, provides that the fees therein provided shall be omitted when there is sufficient money on hand as therein set forth "in the opinion of the Superintendent of Building and Loan Associations."

Section 154-39, General Code, provides, insofar as is pertinent, as follows:

"The Department of Commerce shall have all powers and perform all duties vested in the inspector of building and loan associations, the state fire marshal, the Superintendent of Insurance, the state inspector of oils, and the commissioner of securities; and said department shall have all powers and perform all duties vested by law in any and all officers, deputies and employes of such offices and departments. Wherever powers are conferred or duties imposed upon any of such departments, offices or officers, such powers and duties shall be construed as vested in the Department of Commerce.

\* \* \*

Since, under the foregoing section, the Department of Commerce is granted all the powers and charged with the performance of all the duties imposed upon the Division of Building and Loan Associations, the conclusion seems inescapable that as an administrative policy, the determination as to the sufficiency of such funds, as provided in Section 691, by the Superintendent of Building and Loan Associations is, of course, subject to the approval of the Director of Commerce—this, for the reason that the office of Superintendent of Building and Loan Associations is provided in Section 154-6, General Code, as an office created within the Department of Commerce, and Section 154-8, General Code, provides that the officers mentioned in Section 154-6 "shall be under the direction, supervision and control of the directors of their respective departments, and shall perform such duties as such directors shall prescribe."

Specifically answering your question, it is my opinion that:

1. Under the provisions of Section 691, General Code, when at the close of business on June 30 of any year there is on hand in the fund provided in said section a sufficient amount for maintaining the Division of Building and Loan Associations for the ensuing year, the fees provided for filing the annual reports of building and loan associations to be paid at the time of filing such reports may be omitted for such ensuing year.
2. Money on hand in the fund provided in Section 691, General Code, may be paid out only pursuant to appropriation by the General Assembly, as provided in Section 22, Article II of the Constitution.
3. The duty of determining the sufficiency of such funds is placed in the first instance upon the Superintendent of Building and Loan Associations, subject to the approval of the Director of Commerce, who is charged with the administration of the Division of Building and Loan Associations.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*