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BUILDING AND LOAN ASSOCIATIONS—

1. EVASION OF LOAN LIMITS OF §1151.292(G) RC; SUPERINTENDENT OF BUILDING AND LOAN ASSOCIATIONS MAY CONCLUDE THAT INDIRECT LOANS VIOLATE THIS SECTION; PERSONS OPERATING THE CORPORATION INDIRECTLY.

2. SUBSTANTIAL IDENTITY OF OWNERSHIP OF REAL ESTATE DEVELOPMENT CORPORATION AND BUILDING AND LOAN ASSOCIATION, FINDING THAT §1151.292(H) RC IS VIOLATED UNLESS SUPERINTENDENT'S WRITTEN APPROVAL OF LOANS HAS BEEN OBTAINED.

3. TRANSACTION VIOLATIVE OF §1151.292 RC; SUPERINTENDENT MAY REQUIRE DIVULGENCE OF NAMES OF OFFICERS AND AGENTS OF SUCH BUILDING AND LOAN ASSOCIATION WHO ARE ALSO OFFICERS AND PRINCIPAL SHAREHOLDERS IN SUCH OTHER CORPORATION.

SYLLABUS:

1. A corporate entity cannot be used as a shield for illegal acts, and where the superintendent of building and loan associations finds that two or more corporations, whose officers, directors and shareholders are substantially the same, were organized or are being used to evade or circumvent the loan limitations in Section 1151.292 (G), Revised Code, he may properly conclude that the making of loans to them in excess of such limitations are in violation of such section in that they would constitute loans made indirectly to the persons operating the corporation.

2. Where the superintendent of building and loan associations finds that a corporation, chartered for real estate development or other purposes, whose officers, directors and shareholders are substantially the same as those of an Ohio chartered building and loan association, was organized or is being used to evade or circumvent the requirement of Section 1151.292 (H), Revised Code, that the written approval of the superintendent be given before an association loans money to or enters into other specified transactions with its officers, directors or employees, he may properly conclude that such transactions without the written approval of the superintendent are in violation of said sections.

3. Where there is reasonable cause to believe that the officers, directors and shareholders of a corporation, chartered for real estate development or other lawful purposes, which has been loaned money by a building and loan association whose officers, directors and shareholders are substantially the same as those of such cor-

poration, or where such corporation and such association have had other transactions mentioned in Section 1151.292, Revised Code, the superintendent of building and loan associations, during an examination of such association, may, through his deputies or examiners, require the officers and agents of such building and loan association to divulge the names of the officers, directors and principal shareholders of the corporation believed to have been a party to a transaction that violated Section 1151.292, Revised Code.

Columbus, Ohio, October 11, 1957

Hon. Theodore F. Burdsall, Superintendent,
Division of Building and Loan Associations
Columbus, Ohio

Dear Sir:

Your two requests for my opinion concern the same authorities and reasoning and I shall consider them together. They read as follows:

> "In order to properly administer the affairs of building and loan associations chartered by the State of Ohio and under the supervision of the Superintendent of Building and Loan Associations, it is my desire to submit to you for formal opinion for my guidance the following question of law as it applies to such companies:
>
> Section 1151.292 (G) of the Revised Code of Ohio provides:
>
> 'No such association shall, directly or indirectly, loan to any one corporation or person, already primarily indebted to the association unless such indebtedness has been subsequently assumed by another person or corporation, in a total amount which, together with the amount to be loaned, is more than four per cent of the amount standing on the association's books to the credit of its shareholders and depositors on account of shares and deposits, but any association may grant one or more mortgage loans, not more than thirty-five thousand dollars in the aggregate, regardless of such four per cent limitation.'
>
> (1) May the Board of Directors of a State-chartered building and loan association legally loan more than 4% of its stock credits and deposits to two or more corporations organized for real estate development, or real estate speculation, or other lawful purpose, when the officers, directors, or principal shareholders of such two or more corporations are the same, or substantially made up of the same persons, in view of the limitations of Section 1151.292 (G) of the Revised Code?

(2) Does the making of loans to several corporations which are organized by, or managed by, or owned by, the same or substantially the same persons, constitute a loan made indirectly to a corporation or person subject to the limitation of Section 1151.292 (G)?"

"In order to properly administer the affairs of building and loan associations chartered by the State of Ohio and under the supervision of the Superintendent of Building and Loan Associations, it is my desire to submit to you for formal opinion for my guidance the following question of law as it applies to such companies:

Section 1151.292 (H) of the Revised Code provides:

'Without the written approval of the superintendent, no association shall make any loan on real estate to any of its officers, directors, or employees, or buy from or sell to them any real estate, mortage loan, or other kind of investment, except that with the approval of the directors not interested in such loan except as directors, any director, officer, or employee of the association may be granted a loan on his own home.'

(1) Does a corporation chartered by the State of Ohio for real estate development, investments, or other lawful purposes, in which its principal officers, directors, and substantial shareholders are also the officers, or directors of a State-chartered building and loan association, who as directors of such association granted to the private corporation of which they are principal shareholders or directors and officers, a loan or loans upon corporate real estate, come within the limitations of Section 1151.292 (H) and thereby require the prior written approval of the Superintendent, for such loans?

(2) For the purpose of determining the compliance of loans granted by State-chartered building and loan associations with the provisions of Section 1151.292 (H) of the Revised Code, during the course of examinations conducted by the deputies and examiners of the Division of Building and Loan Associations of the State of Ohio as required by statute, may the Superintendent of Building and Loan Associations, through such deputies and examiners, require the submission of the names of officers, directors and principal stockholders of such private corporation obtaining such real estate loan from said association?"

Building and Loan Associations are intended to be chiefly interested in assisting their individual members to save and accumulate money and to loan money to their members and others for the building of their own homes, and Section 1151.23, Revised Code, prohibits withdrawals by check or draft or the carrying of demand, commercial or checking accounts.

Such associations are under state regulation and control, under Article XIII, Sec. 2, of the Constitution of Ohio, and their regulation is a valid exercise of the police power of the state. The legislature has enacted many statutes regulating building and loan associations for the protection of creditors, investors and depositors. This recognition of the *quasi*-public character of these associations has resulted in many regulatory laws, among them the sections you quoted in your inquiries.

It is axiomatic that a statute clear and unambiguous on its face shall mean exactly what it says and not be susceptible to construction; however, if there should be any ambiguity in a statutory provision, it should be construed so as to accomplish the purpose intended by the legislature. On this point Volume 3 of Sutherland Statutory Construction, Section 5505, reads as follows:

> "A large number of the decisions have come to recognize that a construction is preferred which is either strict or liberal with reference to the purposes and objects of the statute. This makes for the soundest analysis of the problem of liberal and strict construction. Thereunder, a statute is liberally construed when the letter of the statute is extended to include matters within the spirit or purpose of the statute; and a statute is strictly construed when the letter of the statute is narrowed to exclude matters, which if included would defeat the policy of the legislation and lend itself to absurdity. * * *"

There can be no doubt that the purpose of the legislature in enacting this Section 1151.292 (G) was to prevent a building and loan association concentrating its loans directly or indirectly to any one corporation or person and thus distribute the risk of the loans by making loans of less than 4% of the total value of the shares and deposits up to $35,000.00. This would tend to provide for strict construction of the law to prevent over lending to one person or corporation. Section 1151.292 (H) was doubtless enacted to provide closer supervision of loans to officers, directors or employees. It may also be well to note here that the Superintendent of the Division of Building and Loan Associations, if he finds upon examination that the affairs of a domestic building and loan association are being conducted in whole or in substantial part contrary to law, or that its affairs are not being conducted for the best interests of the depositors, shareholders or creditors, may, with the written approval of the Director of Commerce, take possession of the business and property of the association under Section 1157.01, Revised Code. This point is mentioned to

show the high degree of supervision the legislature intended the associations be given.

It is true that where loans are made to different corporations, it might appear that each corporation is a separate entity, separate and apart from its shareholders, and should be treated separately. This separation of entities is the general rule, it is true, but in certain circumstances the courts will disregard a corporate entity. This point is well stated in 12 Ohio Jurisprudence 2d, p. 130, which reads in pertinent part as follows:

> "One of the basic propositions underlying the concept of the corporation is that it is an entity separate and distinct from its shareholders or members. This corporate attribute is frequently referred to as a fiction. And it is a fiction in the sense that the corporate entity, unlike the entity of the natural person, is a creature of law and not of nature. The 'fiction' of the corporate entity is only one of many fictions in the law. And like all other fictions it was 'introduced for the purpose of convenience and to subserve the ends of justice'. It is a well established doctrine that the fiction of the corporate entity was introduced for convenience of the corporation in the transaction of its business, and of those who do business with it. However, the principle of the separate corporate entity is subject, as all other fictions are, to the rule that equity will look through the form of things to their substance where the ends of justice cannot be served in any other way. So, when the concept of the corporate entity is urged to an intent and purpose not within the reason and policy of the fiction the entity will be disregarded and the shareholders will stand in its stead. * * *"

This article then lists cases and situations under which the corporation fiction will be disregarded. Another circumstance where the courts will disregard a corporate entity is where it is established with the idea of evading the law. This point is well made in 12 Ohio Jurisprudence 2d, starting on page 136:

> "It is a well established rule that the corporate entity will be disregarded where the corporation is formed to evade a statute or where it is 'so controlled and its affairs so conducted as to make it merely an instrumentality for the purpose of evading or circumventing a state law.' Thus, where a statute forbids the issuance of an insurance agent's license unless the applicant is a resident of the state, a court of equity will not compel the Superintendent of Insurance to issue a license to a domestic corporation, the majority of whose stock is owned by a nonresident insurance broker. In such instance, the court will look through the form to the substance and deny the right of the nonresident to do indi-

rectly that which he may not do directly. Any other result would permit the circumvention of the statute relative to resident licenses. So also, where a corporation is prohibited by law from constructing an electric railway along a certain route, a corporation formed by it to erect such a railway line will be enjoined from exercising the right of eminent domain to acquire the right of way, even though the corporation meets all of the technical requirements of the statutes. The court will disregard the corporate entity of the new corporation and treat the situation as if the parent corporation is itself attempting to exercise the right of eminent domain for an illegal purpose. Similarly, where a group of individuals organizes a corporation which thereafter engages in a conspiracy to violate the anti-trust laws they cannot avoid responsibility by dissolving the corporation and forming a new one to carry on the same business, if the new corporation becomes a party to the conspiracy. The new conspirator, joining the others in the furtherance of the common design, and accepting all the property, benefits, and advantages already acquired for it by the united efforts of the former corporation and its co-conspirators, will not be exempt from liability for the entire course of the conspiracy because it had no part in the original conspiracy. * * *"

The foregoing statement is indicative of the course which the *courts* pursue where it is suggested that a corporate entity is designed to evade the provisions of law and that it should therefore be disregarded. In the case at hand, however, we are concerned with the course which an administrative officer or agency should adopt in the face of such a suggestion.

You will observe that under the provisions of Section 1155.02, Revised Code, it is your duty, as superintendent, to "see that the laws relating to building and loan associations are executed and enforced."

This quite clearly makes it your duty, initially, to determine to your own satisfaction whether a law relating to such associations is being violated; and this, of course, involves the application of rules of law to specific fact situations.

Having in mind the established rule of law that a corporate entity will be disregarded where the organization concerned is formed for the purpose of evading a statute, it becomes your duty, in the face of a suggestion of intent to evade the provisions of a statute, to examine fully all the facts and circumstances relating thereto, and to apply such established rule of law so as to determine to your own satisfaction that a particular fact situation does or does not justify a disregard of a corporate entity.

In my opinion this is doing nothing more than to anticipate the attitude which a judicial tribunal would take when applying the same rule of law to such fact situation, and that I regard as clearly a part of your duty in enforcing the laws relating to these associations.

In a particular situation where you have determined to your own satisfaction that were the matter presented to a judicial tribunal the corporate entity would be disregarded, it would appear to be your proper course of action to proceed as in any other situation in which you deem the law to be violated.

Your second question concerns the power of the superintendent, through deputies and examiners, to require the submission of the "names of officers, directors and principal stockholders of such private corporation obtaining such real estate loan from said association." By "such private corporation" I assume you mean a corporation whose officers, directors and shareholders are reasonably believed to be substantially the same as those of the association.

Section 1155.11, Revised Code, provides the powers of the examiners and reads as follows:

> "An examiner appointed by the superintendent of building and loan associations shall have access to and may compel the production of all books, papers, securities, moneys, and other property of an association under examination by him. *He may administer oaths to and examine the officers and agents of such association as to its affairs.*" (Emphasis added.)

Your enforcement duties are set forth in Section 1155.02, Revised Code, in pertinent part as follows:

> "The superintendent of building and loan associations shall see that the laws relating to building and loan associations are executed and enforced. * * *"

Thus your duty and the power of examiners is set forth in the statute in clear and unambiguous language and I suggest that if there was reasonable cause to believe the laws relating to building and loan associations were being violated you should require all pertinent facts to be submitted to you or your deputy or examiner.

For the foregoing reasons I am of the opinion and you are hereby advised:

1. A corporate entity cannot be used as a shield for illegal acts, and where the superintendent of building and loan associations finds that two or more corporations, whose officers, directors and shareholders are substantially the same, were organized or are being used to evade or circumvent the loan limitations in Section 1151.292 (G), Revised Code, he may properly conclude that the making of loans to them in excess of such limitations are in violation of such section in that they would constitute loans made indirectly to the persons operating the corporation.

2. Where the superintendent of building and loan associations finds that a corporation, chartered for real estate development or other purposes, whose officers, directors and shareholders are substantially the same as those of an Ohio chartered building and loan association, was organized or is being used to evade or circumvent the requirement of Section 1151.292 (H), Revised Code, that the written approval of the superintendent be given before an association loans money to or enters into other specified transactions with its officers, directors or employees, he may properly conclude that such transactions without the written approval of the superintendent are in violation of said sections.

3. Where there is reasonable cause to believe that the officers, directors and shareholders of a corporation, chartered for real estate development or other lawful purposes, which has been loaned money by a building and loan association whose officers, directors and shareholders are substantially the same as those of such corporation, or where such corporation and such association have had other transactions mentioned in Section 1151.292, Revised Code, the superintendent of building and loan associations, during an examination of such association, may, through his deputies or examiners, require the officers and agents of such building and loan association to divulge the names of the officers, directors and principal shareholders of the corporation believed to have been a party to a transaction that violated Section 1151.292, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General