

OPINION NO. 66-075

Syllabus:

Section 1155.13, Revised Code, makes it mandatory upon a building and loan association to pay the fee for filing the annual statement of the association required by Section 1155.07,

Revised Code, and the superintendent of building and loans can not return the fee paid although the association has converted to a federal charter.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, April 7, 1966

I have your request for my opinion which reads as follows:

"The Division of Building and Loan Associations has requested us to secure your opinion concerning matters in that division involving Sections 1155.07 and 1155.13, Ohio Revised Code.

"Section 1155.07 provided that

'Every building and loan association doing business in this state shall, on the thirtieth day of June and the thirty-first day of December of each year, or within forty days thereafter, make a report in writing of the affairs and business of the association for the preceding half year, showing its financial condition at the end thereof. The statement on the thirty-first day of December shall be the annual statement of the association.'

"Section 1155.13 provides that

'Every building and loan association organized under Chapter 1151. of the Revised Code shall pay to the superintendent of building and loan associations, for filing each annual report of such association, at the time said report is filed, ten dollars plus a sum equal to one eightieth of one per cent of the assets of such association shown in such report, unless the collection of such fees is omitted as provided in this section. All such fees shall be paid into the state treasury to the credit of a fund which shall be used only for the official functions of the superintendent, and only upon his order.

'In any years when, in the opinion of the superintendent, the amount of such fund on hand at the close of business on the thirtieth day of June is sufficient to meet the expenses of his official functions for the ensuing year, the fees provided for in this section shall be omitted for such year.'

"As a matter of information, no opinion of

the superintendent has been made to the effect that fees be omitted under the last paragraph of Section 1155.13.

"The facts are as follows:

"1. A state chartered building and loan association submitted its annual report on February 2, 1966 for the period ending December 31, 1965, together with a check for \$4,301.87 representing the filing fee based on the statutory amount due. There is no difference of opinion as to the correct amount of payment.

"2. After the close of business on December 31, 1965, the state chartered savings and loan association converted to a federal charter, as provided by law, and new articles were filed at that time with the Secretary of State. There is no question as to the validity of the conversion.

"3. The association, while sending the fee (which Section 1155.13 provides shall be paid for filing the annual report) has requested return of the fee since it is no longer a state chartered institution. Further, they claim that since they will no longer be examined by the state superintendent and therefore will no longer cause that office to incur any expense, they do not have an financial responsibility to the state.

"4. The association was last examined as a state chartered association on September 20, 1965.

"We request your opinion regarding the above stated sections and facts as to whether or not we may legally keep the fee of \$4,301.87 submitted with the annual report of December 31, 1965?"

The fee in question is that fee required by Section 1155.13, Revised Code, which reads in pertinent part as follows:

* * * * *

"Every building and loan association organized under Chapter 1151. of the Revised Code shall pay to the superintendent of building and loan associations, for filing each annual report of such association, at the time said report is filed, ten dollars plus a sum equal to one eightieth of one per cent of the assets of such association shown in such report, unless the collection of such fees is omitted as provided in this section. All such fees shall

be paid into the state treasury to the credit of a fund which shall be used only for the official functions of the superintendent, and only upon his order.

"In any year when, in the opinion of the superintendent, the amount of such fund on hand at the close of business on the thirtieth day of June is sufficient to meet the expenses of his official functions for the ensuing year, the fees provided for in this section shall be omitted for such year."
(Emphasis added)

This section of the code was originally enacted in 1908, 90 Ohio Laws 535, Section 43; although it has been amended several times, the general terminology that this fee is for the filing of the annual report or statement which is required to be filed, has remained in the section since its inception. In addition it is mandatory that it be paid at the time of filing the annual report for the preceding year. This payment shall be made unless the superintendent finds, upon filing his report to the Governor pursuant to Section 1155.14, Revised Code, in June, that there are sufficient funds to his credit in the state treasury to meet his expenses for the ensuing year he may order that the collection of the fees be omitted.

There is no doubt but that the annual report was required to be made to the Superintendent pursuant to Section 1155.07, Revised Code, by the building and loan association, although the conversion to a federal charter was imminent. The fee is required to be paid "for filing the annual report" and "at the time such report is filed."

I agree that the association has no further financial responsibility to the state inasmuch as Section 1151.36, Revised Code, sets out the procedure for conversion to a federal savings and loan association and states that after the new charter is filed with the Secretary of State that:

"* * * * *

"(4) The power and authority of the superintendent with respect to such association, its property, and its assets shall terminate.

"* * * * *

It is therefore my opinion and you are hereby advised that Section 1155.13, Revised Code, makes it mandatory upon a building and loan association to pay the fee for filing the annual statement of the association required by Section 1155.07, Revised Code, and the superintendent of building and loans can not return the fee paid although the association has converted to a federal charter.