

OPINION NO. 66-123**Syllabus:**

1. A building and loan association may not transfer to the credit of members dividends earned since the last dividend date on the date of withdrawal, when such withdrawal is made between dividend distribution dates.

2. On dividend distribution dates, an association may distribute pro rata dividends to members on amounts withdrawn between dividend distribution dates, for the period such amounts were actually held by the association, if its bylaws so provide and if such members are still members on the dividend distribution date.

**To: J. Gordon Peltier, Director, Ohio State Department of Commerce,
Columbus, Ohio**

By: William B. Saxbe, Attorney General, July 15, 1966

Your request for my opinion advises of a regulation recently promulgated by the Federal Home Loan Bank Board. The regulation allows federal associations to pay dividends on amounts withdrawn between the dates of regular dividend distribution. Your concern is that state chartered building and loan associations may be put in a non-competitive position with the federal associations because of the new regulation and therefore pose the following question:

"May the Board of Directors of a State-Chartered Mutual institution adopt bylaws, providing for the distribution of dividends on amounts withdrawn from share accounts on the dates withdrawn, even though between the date as of which such association regularly distributes dividends on share accounts; provided, that: Dividends on any amount so withdrawn shall neither be distributed for any greater portion of the dividend period than that during which such amount remained in the association, nor at a rate in excess of the rate at which dividends (exclusive of Section 1151.521-Extra Dividends) are distributed on share accounts for the dividend period in which such amount is so withdrawn?"

The amended federal regulation, 12 C.F.R. 545.1-1 (c), reads as follows:

"(c) Amounts withdrawn between distribution dates. A Federal association which has a charter in the form of Charter N or Charter

K (rev.) may, after adoption by its board of directors of a resolution so providing and while such resolution remains in effect, distribute earnings on amounts withdrawn from savings accounts between the dates as of which such Federal association regularly distributes earnings on savings accounts: Provided, That earnings on any amount so withdrawn shall neither be distributed for any greater portion of the dividend period than that during which such amount remained in the association nor at a rate in excess of the rate at which earnings, exclusive of any bonus, are distributed on savings accounts for the dividend period in which such amount is so withdrawn: Provided further, That, prior to July 1, 1966, no such Federal association may so distribute earnings on amounts so withdrawn if the home office of such Federal association is in a State, district or territory (including Puerto Rico, Guam, and the Virgin Islands) where building and loan or savings and loan associations, homestead associations, cooperative banks, and mutual savings banks are prohibited by the laws of such State, district or territory from distributing earnings on amounts withdrawn between the dates as of which earnings are regularly distributed."

(Emphasis added)

In order to understand the regulation the terminology must be explained. Since all Federal associations are mutual, all holders of savings accounts are "members". "Savings accounts" corresponds to the Ohio "withdrawable share accounts". "Earnings" corresponds to "dividends". Federal associations will be able to pay "dividends" on amounts withdrawn between the dates of regular "dividend" distribution.

Questions relating to the payment and distribution of dividends have been considered previously. In Opinion No. 892, Opinions of the Attorney General for 1959, page 596, the syllabus states:

"A building and loan association may enact bylaws pursuant to Section 1151.52, Revised Code, which bylaws permit the payment of dividends to a member on stock credits of record during the dividend period, but which have been repurchased prior to the dividend paying date, but may not provide for the payment of dividends on repurchased stock credits when the former owner of such repurchased stock credits is not a member of the particular association on the dividend declaration date."

(Emphasis added)

The reasoning of the opinion is that since Section

1151.52, Revised Code, was phrased in terms of "members" receiving dividends, a person not a member on the dividend distribution date could not receive dividends on a share account totally withdrawn.

In Opinion No. 3344, Opinions of the Attorney General for 1962, page 837, the syllabus states:

"Under Section 1151.52, Revised Code, a building and loan association organized under the laws of this state may not transfer dividends to the credit of members more often than semiannually, but dividends so transferred may be paid to said members in conformity with Sections 1151.02 to 1151.55, inclusive, at such times as is provided by the constitution and bylaws of the associations."
(Emphasis added)

The opinion construed the language analogous to Section 1151.52, supra, as limiting the number of times for transfer of dividends to the credit of members. The statute was deemed to be clear and unambiguous, in need of no interpretation.

Although the statute was amended in 1963, the provision about members was not changed. Section 1151.52, Revised Code, now reads in part:

"* * *A further portion of such earnings to be determined by the board shall, annually, semiannually, or quarterly, be transferred to the credit of members of the association as a dividend, in such proportions as the bylaws of the association provide. * * *"
(Emphasis-added)

Since the language of the statute plainly states that dividends shall be transferred annually, semiannually, or quarterly to the credit of members, dividends since the last dividend declaration date may not be paid on the date of withdrawal on amounts withdrawn between dividend dates. However, dividends on amounts withdrawn between dividend dates may be credited to the account of a member, pro rata for the period such amounts were actually held by the association on the next dividend date, if the bylaws so provide. (See Opinion Nos. 892 and 3344, supra.)

Accordingly, it is my opinion and you are advised:

1. A building and loan association may not transfer to the credit of members dividends earned since the last dividend date on the date of withdrawal, when such withdrawal is made between dividend distribution dates.

2. On dividend distribution dates, an association may distribute pro rata dividends to members on amounts withdrawn between dividend distribution dates, for the period such

amounts were actually held by the association, if its bylaws so provide and if such members are still members on the dividend distribution date.