

OPINION NO. 67-011**Syllabus:**

1. There is no statutory requirement that the approval of the Superintendent of Building and Loan Associations be obtained prior to the filing of the corporate charter of a service corporation as defined in Subsection (E), Section 1151.34, Revised Code.

2. The purpose clause of a service corporation may be either compatible or incompatible with the purposes, powers and duties of a domestic building and loan association, depending upon the manner of its exercise.

3. If the exercise of the purpose clause of a service corporation is compatible with the purposes, powers and duties of a domestic building and loan association there is no law which forbids such a corporation from exercising any powers afforded by the general corporation law to a corporation for profit.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, January 19, 1967

Your request for my opinion reads as follows:

"The Division of Building and Loan Associations of the Department of Commerce wishes your opinion regarding the interpretation of Section 1151.34 (E), Ohio Revised Code, effective June 21, 1965. The section provides as follows:

"Such associations may invest no more than two per cent of the association's assets in the capital stock, obligations, and other securities of service corporations organized under the laws of this state to provide domestic associations as defined in section 1151.01 of the Revised Code, services compatible with the purposes, powers, and duties of such domestic associations. Such service corporations may also provide mechanical, clerical, and record keeping services for other corporations, other persons, or governmental units subject to the written approval of the state superintendent of building and loan associations. The capital stock of such service corporations shall be available for purchase only by such domestic associations and no association stockholder shall hold more than fifty per cent of the capital stock of such service corporation.'

"A corporation has been duly organized under the General Corporation laws of the

State of Ohio and is a corporation in good standing according to the records of the Secretary of State. It has three shareholders, all of which are domestic building and loan associations, no one of which holds more than 50% of the capital stock of the corporation. None of the investments of the three shareholder-associations exceeds 2% of that particular association's assets.

"The purpose clause of this corporation reads as follows:

"The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

"To devise, formulate and conduct business research, studies, surveys and tests; to create, install and utilize business systems, methods, controls, layouts and plans; to assemble and supply personnel and staff; all as required or expedient to a solution of business problems of others or to an improvement in function or to an increase in efficiency or profit in behalf of such others, whether in relation management, administration, maintenance, manufacture, production, display, inventory, marketing, sales, distribution or otherwise; to sell, publish and otherwise deal in and with any of the foregoing; to furnish consultation and render business counsel; to determine or predetermine the unit cost of each operational contribution to the end product or sale and to determine or predetermine the competitiveness of the end product; to provide domestic building and loan associations, as defined in section 1151.01 of the Ohio Revised Code, services compatible with the purposes, powers and duties of such associations; and to provide mechanical, clerical and record keeping services for other corporations, persons or governmental units subject to the written approval of the state superintendent of building and loan associations as set forth in section 1151.34 of the Ohio Revised Code.

"To engage in any other type of business or activity which a corporation may be empowered to engage in under the general corporate laws of the State of Ohio, including, without limiting the generality of the foregoing, the acquisition, holding and disposition of its own shares or the shares of any other corporation.'

"The following questions are presented for your opinion relative to the law and facts stated:

"1. Does Section 1151.34 (E), Revised

Code require this Ohio corporation formed for the purposes stated in its purpose clause to obtain written approval of its Articles of Incorporation or any amendment thereof before filing such Articles or amendment with the Secretary of State of Ohio?

"2. Are the purposes expressed in the foregoing purpose clause 'compatible' with the purposes, powers, and duties of a domestic Building and Loan Association?

"3. Inasmuch as a service corporation formed for the purpose set forth in section 1151.34 (E) is incorporated under the General Corporation Law, if the above stated purposes are compatible with the purposes, powers and duties of a domestic Building and Loan Association, is there any law which forbids a service corporation with such a purpose clause from exercising any powers which are afforded by the General Corporation Law to a corporation for profit?"

The powers and duties of the Superintendent of the Division of Building and Loan Associations are such as are authorized by statute, incorporated in Chapters 1151 and 1155, Revised Code. He is specifically authorized by Section 1151.02, Revised Code, to approve the articles of incorporation of any building and loan association organized under the general corporation laws of this state, prior to the recording of such articles with the Secretary of State.

There is, however, no comparable statute which requires the prior approval of the Superintendent of Building and Loan Associations before the recording of the articles of incorporation of a service corporation, as defined in Subsection (E), Section 1151.34, Revised Code, with the Secretary of State.

The only statutory reference made to such a "service corporation" is that made in Subsection (E), Section 1151.34, Revised Code, which reads as follows:

"(E) Such building and loan associations may invest no more than two per cent of the association's assets in the capital stock, obligations, and other securities of service corporations organized under the laws of this state to provide domestic associations as defined in section 1151.01 of the Revised Code, services compatible with the purposes, powers, and duties of such domestic associations. Such service corporations may also provide mechanical, clerical, and record keeping services for other corporations, other persons, or governmental units subject to the written approval of the state superintendent of building and loan associations. The capital stock of such service corporations shall be available for purchase only by such domestic associa-

tions and no association stockholder shall hold more than fifty per cent of the capital stock of such service corporation."
(Emphasis added)

This section does not require the approval by the Superintendent of Building and Loan Associations of the articles of incorporation of such service corporation prior to the recording of them with the Secretary of State.

The "service corporation" as defined by Section 1151.34, supra, is sharply delineated. It is the only type of private corporation for profit in which a building and loan association may invest surplus funds, its stock may only be purchased by building and loan associations and no one association may own more than fifty per cent of its stock. Organized under the general corporation laws of the state, it may provide domestic building and loan associations with services compatible with the purposes, powers, and duties of such domestic associations. Further they may provide limited services as listed in the statute to others, with the approval of the Superintendent of Building and Loan Associations.

It would seem apparent that since the statute defines the scope of the authority of a service corporation organized pursuant to Section 1151.34, supra, it is immaterial whether the purpose clause, as such, is compatible with the purposes, powers, and duties of a domestic building and loan association. A purpose clause such as the one suggested in your letter could be either compatible or incompatible, depending upon the manner of its exercise. A building and loan association which had invested in such a corporation would be subject to censure for its investment by the Superintendent of Building and Loan Associations if the corporation provided services to such association incompatible with the purposes, powers and duties of such association.

The specific provisions of Section 1151.34 (E), supra, do not preclude this corporation from exercising powers which may not be permitted a domestic building and loan association. A service corporation is organized under Chapter 1701, Revised Code, and its powers are limited only by the provisions of that chapter. There is no restriction whatsoever on the powers of a service corporation except that it may not sell its services to corporations other than building and loan associations and other persons without the written approval of the Superintendent of Building and Loan Associations. Since the corporation in question is incorporated under the general corporation law and its purposes may be compatible with the purposes, powers and duties of a building and loan association, there is no law which forbids this corporation from exercising any powers afforded by the general corporation law to a corporation for profit.

Therefore, it is my opinion and you are hereby advised:

1. There is no statutory requirement that the approval of the Superintendent of Building and Loan Associations be obtained prior to the filing of the corporate charter of a service corporation as defined in Subsection (E), Section 1151.34, Revised Code.

2. The purpose clause of a service corporation may be either compatible or incompatible with the purposes, powers and duties of a domestic building and loan association, depending upon the manner of its exercise.

3. If the exercise of the purpose clause of the service corporation is compatible with the purposes, powers and duties of a domestic building and loan association there is no law which forbids such a corporation from exercising any powers afforded by the general corporation law to a corporation for profit.