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BUILDING AND LOAN ASSOCIATION—OHIO STATE CHARTERED—CAN NOT LEGALLY MAKE LOAN FOR AMOUNT IN EXCESS OF \$20,000.00, SECURED BY MORTGAGE ON MORE THAN ONE PARCEL OF REAL ESTATE—SECTION 9657 G. C.—NOT MATERIAL IF BUILDING AND LOAN COMPANY CONSIDERS NOT MORE THAN \$20,000.00 TO BE LOANED ON ANY ONE SUCH PROPERTY.

SYLLABUS:

An Ohio State-chartered building and loan association can not legally make a loan for an amount in excess of \$20,000 under the terms and conditions set forth in Section 9657, Paragraph 5, General Code, and secured by a mortgage on more than one parcel of real estate, even though the building and loan company considers not more than \$20,000 to be loaned on any one such property.

Columbus, Ohio, October 22, 1947

Hon. Fred J. Milligan, Director, Department of Commerce  
Columbus 15, Ohio

Dear Sir :

Your request for my opinion reads as follows :

"Section 9657 (4) of the General Code relating to Building and Loan Associations provides that :

'Not more than twenty thousand dollars shall be loaned on the security of any one such property, except as hereinafter provided.'

The Division of Building and Loan Associations has interpreted that statutory provision to mean that loans could not be made in excess of twenty thousand dollars secured by the real estate described in any one mortgage on the terms and conditions set out in Section 9657 (5) of the General Code ; that the word 'property' as used in Section 9657 (4) of the General Code included all real estate described in the mortgage held as security for that loan, although such real estate was described as, and consisted of, more than one parcel.

During the recent period of extensive home construction, a number of Building and Loan Associations have taken exception to the interpretation of General Code Section 9657 (4) adopted by the Division of Building and Loan Associations. These exceptions involve instances where a loan is secured by real estate consisting of more than one parcel, whether adjoining or separated.

It is their contention that where the security described in a mortgage consists of more than one parcel of real estate, a loan may be made for an amount in excess of twenty thousand dollars on the terms and conditions set out in General Code Section 9657 (5) so long as not more than twenty thousand dollars is loaned on any one such parcel of real estate described as security for the loan. For example, it is contended that a loan can be granted for sixty thousand dollars under General Code Section 9657 (5) and secured by a mortgage covering five parcels of real estate so long as not more than twenty thousand dollars is considered to be loaned on any one such parcel.

For your information a copy of the position taken in this matter by one Association and submitted in writing to the Division of Building and Loan Associations for consideration is attached hereto and marked Exhibit A.

The Superintendent of Building and Loan Associations has requested that this matter be submitted to you for a formal opinion. Consequently, we respectfully request, and will appreciate, your formal opinion on the following questions:

1. May an Ohio State-chartered building and loan association legally make a loan for an amount in excess of \$20,000.00 under the terms and conditions set out in Section 9657 (5) of the General Code and secured by a mortgage on more than one parcel of real estate so long as not more than \$20,000.00 is considered to be loaned on any one such parcel?
2. In the event it is your opinion that such loans are authorized, it will be necessary for the Division of Building and Loan Associations to examine and enforce the mechanics surrounding each loan and, therefore, we desire your opinion on whether the following requirements would prevail:
  - a. That the amount loaned on each parcel be allocated and set forth in the mortgage together with rate of interest charged, amortization payments, and date of maturity.
  - b. That a separate application be obtained for the amount loaned on each parcel as required by Section 9657, paragraph C, of the General Code.
  - c. That a separate appraisal of each parcel be made by the appraisal committee as required by Section 9657, paragraph D, of the General Code.
  - d. That the amount loaned on each parcel be set up, identified and maintained on the association's records as a separate loan in the same manner as if that amount were secured by a separate mortgage."

Your question No. 1 reads as follows:

"May an Ohio State-chartered building and loan association legally make a loan for an amount in excess of \$20,000.00 under the terms and conditions set out in Section 9657 (5) of the General Code and secured by a mortgage on more than one parcel of real estate so long as not more than \$20,000.00 is considered to be loaned on any one such parcel?"

Section 9647, General Code, provides that building and loan associations "shall have all the powers set forth in the following sections of this charter." Among these sections is Section 9657, General Code, which provides in part as follows:

"To make loans to members and others on such terms and conditions as may be provided by the association and as are

provided by the limitations of this section and upon the following securities only:

First. Obligations secured by mortgage or deed of trust on real estate which mortgage or deed of trust shall be made direct to the association. Such obligations (except for taxes and assessments not then payable) shall be first liens on real estate. Nothing herein, however, shall prevent an association organized under Chapter 1, Division 4, of the General Code, from accepting additional security other than that herein provided where the primary and principal security is a first mortgage or deed of trust on real estate. All such obligations shall be subject to the following specific limitations:

A. With respect to the security:

(1) Such real estate shall be improved residential property or a combination of residential and business property, or a farm or farms under cultivation, except as hereinafter provided. \* \* \*

(4) Not more than twenty thousand dollars shall be loaned on the security of any one such property, except as hereinafter provided.

(5) The amount loaned shall not exceed seventy-five per cent of the fair value of such real estate as determined by the appraisal committee of the association. \* \* \*

(6) The provisions of sub-paragraphs (1), (4) and (5) of this paragraph to the contrary notwithstanding, but subject to all other requirements of this paragraph, an association may lend not to exceed fifteen per cent of its assets upon any real estate upon which one or more buildings have been permanently erected; but in each such case the value of such building shall be not less than one-half of the entire value of the real estate, and the amount loaned shall not exceed sixty-six and two-thirds per cent of the fair value of such real estate as determined in each instance by the appraisal committee of the association. \* \* \*

(7) In respect to any loan made upon the security of real estate where it is agreed or contemplated that improvements will be made thereon, to become a part of such security, such real estate shall be deemed to be 'improved' within the meaning of this paragraph and the value of such improvements shall be included in the appraisal value of such real estate; provided, however, that during the period of construction, the amount advanced by the association in respect to such loan shall not exceed the actual cost of such building or buildings to such time of advancement. \* \* \*

C. No association shall grant a mortgage loan unless it shall first have obtained a written application (the form of which shall

include all items prescribed by the superintendent) signed and sworn to by the person for whose benefit the application is made.

D. Every appraisal made by the appraisal committee shall be written in ink, indelible pencil, or typewriting, on forms which shall include all items prescribed by the superintendent. Every appraisal report must be signed in ink by the appraisers. Such reports shall be kept by the association in such form as to be made available at all times to the examiners or other agents of the superintendent. \* \* \*"

Stated another way, your question is as to whether a building and loan corporation may make a blanket mortgage exceeding \$20,000 on various parcels of real estate, each parcel qualifying under Part A, paragraph 1, of Section 9657, General Code, provided the building and loan association appraises each parcel separately and a loan is granted at 75% of such appraised value but not to exceed \$20,000 on any one such parcel of property. That is, may a building and loan corporation under such conditions lend up to 75% of the fair value of such real estate and not be limited to lending only 66 $\frac{2}{3}$ % of the fair value of such real estate?

It should be noted that blanket mortgages on real estate are permitted under Part A, paragraph 6, of Section 9657, General Code, above quoted, for an amount not to exceed 66 $\frac{2}{3}$ % of the fair value of such real estate subject to other limitations set forth therein but without limitation as to the amount of the loan.

I think your question may be best answered by the use of one of the examples which you have submitted, namely:

"Loan in the sum of \$120,000, all in one blanket mortgage, covering 24 contiguous properties in one subdivision, there being 24 new houses to be built thereon. Each of these properties identical in value and each had a loan value of \$5,000 based upon 75% of the appraised value. The records of the association show separate appraisals for each of the 24 properties in the mortgage."

It should be noted that each of such properties in the above example would qualify as security for a separate loan of \$5,000 based upon 75% of the appraised value. I can see no objection in taking a note for \$120,000 with proper provisions therein, secured by a mortgage which distinctly provides for \$5,000 security on each of the separate 24 lots, which in effect would be to include 24 distinct mortgages in one instrument. Such an instrument, it seems to me, would be awkward and cumbersome and

serve no useful purpose, except a possible savings in filing fees. Part C and Part D of Section 9657, General Code, would also have to be complied with.

However, when the separate loans are added together and a blanket mortgage for \$120,000 is taken covering each and all of the parcels added together, even though separate applications are taken as provided for in paragraph C and separate appraisements are made as provided in paragraph D of Section 9657, General Code, a different problem presents itself. Under such a mortgage any one such property, that is, any one parcel, is liable for the entire amount of the loan, namely \$120,000. Although the other parcels would be additional security for such a loan, nevertheless a loan has been made for \$120,000 on "any one such property" which clearly violates paragraph 4 of the statute above quoted.

I am therefore of the opinion that an Ohio State-chartered building and loan association can not legally make a loan for an amount in excess of \$20,000 under the terms and conditions set forth in Section 9657, paragraph 5, General Code, and secured by a mortgage on more than one parcel of real estate, even though the building and loan company considers not more than \$20,000 to be loaned on any one such property.

Having answered your first question in the negative, it becomes unnecessary to answer the other questions presented.

Respectfully,

HUGH S. JENKINS,  
Attorney General.