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BLDG. AND LOAN ASSN. MAY ENACT *BYLAWS* WHICH PERMIT PAYMENT OF DIVIDENDS TO MEMBER ON STOCK CREDITS OF RECORD DURING DIVIDENDS PERIOD, BUT WHICH HAVE BEEN REPURCHASED PRIOR TO DIVIDEND PAYING DATE, BUT MAY NOT PROVIDE FOR PAYMENT OF DIVIDENDS ON REPURCHASED STOCK CREDITS WHEN FORMER OWNER IS NOT A MEMBER OF PARTICULAR ASSOCIATION ON DIVIDEND DECLARATION DATE. SEC. 1151.52, R.R.

SYLLABUS :

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.

Columbus, Ohio, October 26, 1959

Hon. Andrew C. Putka, Superintendent of Building and Loan Associations
Columbus, Ohio

Dear Sir:

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

“In order to properly administer the affairs of building and loan associations chartered by the State of Ohio it is my desire to submit to you for opinion the following questions:

“Section 1151.20 of the Revised Code provides, in part:

“‘A building and loan association may issue stock to members, upon certificates or upon written subscription, *on such terms consistent with sections 1151.02 to 1151.55, inclusive, of the Revised Code*, as its constitution and bylaws provide, but no initiation or membership fee shall be charged and if the stock is sold at a premium, all such premiums shall be placed in the reserve fund of the association. *All amounts, except fines and premiums, paid in by a member as such on any one account, together with all credits on such account, shall be considered payments on a stock subscription, and the aggregate of such payments and credits, less any charges to such account, shall constitute a stock credit of such member for the purposes of such sections.* Each member may vote his stock to the extent and in the manner provided by the constitution and bylaws of the association, but no member shall accumulate his votes. This section does not prohibit the issuance of permanent stock.’

“Section 1151.22 of the Revised Code, provides, in part:

“‘Dividends upon the stock credit of any stockholder, to the extent of the amount of his application to repurchase, shall be discontinued while such application remains upon a list for the repurchase of stock credits; but dividends that would otherwise be paid upon such stock credits shall not be discontinued, notwithstanding the application for repurchase, if said application is withdrawn in consideration of the restoration of said dividends.’

“Section 1151.52 of the Revised Code provides:

“‘After payment of expenses and interest, a portion of the earnings of a building and loan association to be determined by the board of directors shall annually or semiannually, be placed in the reserve fund for the payment of contingent losses. A further portion of such earnings to be determined by the board shall,

annually or semiannually, be transferred to the credit of members of the association as a dividend, in such proportions as the constitution and bylaws of the association provide. Such association is not required to credit or pay dividend on accounts of less than ten dollars. *Such dividends shall be paid to such members at such time and in such manner, in conformity with sections 1151.02 to 1151.55, inclusive, of the Revised Code, as such constitution and bylaws provide. Any residue of such earnings not credited to reserves, or the reserve fund under section 1151.50 of the Revised Code, and not declared as dividends, may be held as undivided profits and used as other earnings.'*

"Is a building and loan association prohibited by statute from paying dividends to a member on stock credits which were of record during the dividend period but have been repurchased prior to the dividend paying date under either of the following circumstances:

"(1.) If such person has withdrawn all his stock credits prior to the dividend paying date?

"(2.) If he owns a small amount of stock credits on the dividend paying date?

"If your answer to either (1.) or (2.), or both, is in the negative, could an association having any one of the following ByLaw provisions pay dividends to members on stock credits which were of record during the dividend paying period but have been repurchased in whole or substantial part prior to dividend paying dates:

"(1.) The proportion of earnings to be transferred to and credits on the separate accounts of members as dividends on all open accounts at the close of each fiscal half year ending with the last day of each June and December, shall be computed on the full dollars of the daily balance of Stock Credits, or on the entire balance when less than one dollar, for the time, from the first of the half year or the day of deposit, as the case may be, to the day of withdrawals.'

"(2.) Such dividends as the Board may declare shall be divided among the members in proportion to the amount of money paid in on stock by each and the length of time the same has been held by the Association less the withdrawals.'

"(3.) No dividends shall be declared except dividends payable on said dividend dates. Payments of net earnings to shareholders are dividends and shall not be referred to as interest. Dividends upon Full-Paid Shares shall be promptly paid in cash as of the dividend date. Dividends on shares

of other classes shall be credited to such share accounts on the books of the Association as of the dividend date unless the Association shall have agreed with the holder of any of such shares to pay all or part of the dividends in cash. Dividends payable in cash shall be paid on the dividend payment date and may be paid by check or bank draft. All shareholders shall participate equally in dividends pro rata to paid in value, plus credited dividends (hereinafter termed "participation value") of their respective share accounts: provided that the Association shall not be required to pay or credit dividends on share accounts of \$5 or less. Except as above provided, dividends shall be declared on the participation value of each share account at the beginning of the dividend period and plus payments thereon made during the dividend period (less amounts repurchased and noticed for repurchase, which for dividend purposes shall be deducted from the latest previous payments thereon) computed at the dividend rate for the time invested, determined as provided below. The date of investment shall be the date of the actual receipt by the Association of a payment on a share account, except that the Board of Directors may fix a date, which shall not be later than the tenth of the month, for determining the date of investment, provided, however, that the Board of Directors may permit investments of \$100 or more to receive dividends from the date of receipt in any event. Payments on share accounts, affected by such determination date, received by the Association on or before determination date, shall receive dividends as if invested on the first of the month during which such payment was made. Payments on share accounts, affected by such determination date, received subsequent to such determination date, shall receive dividends as if invested on the first of the month next succeeding the month during which such payment was made. No preference shall be created with respect to the distribution of assets under voluntary or involuntary liquidation, dissolution or winding up the Association.' "

In answer to your first question, concerning whether a person may receive dividends from a building and loan association on stock credits which were of record during the dividend period but all of which were repurchased prior to the dividend paying date, I refer you to Section 1151.52, Revised Code, quoted in your request. That statute says, in part, that such earnings as are determined by the board shall "be transferred to the credit of *members* of the association as a dividend * * *." (Emphasis added)

Although I have been unable to find any authority construing this particular language, it would appear that dividends are to be paid at the

dividend paying date only to members of the association. Since only those persons who have stock credits of record on the actual dividend date could be considered to be members of the association on that date, it follows that dividend payments may be declared and paid only to such persons who have stock credits of record still outstanding on the dividend declaration date. I must, therefore, answer your first question in the negative.

As to your second question of whether a building and loan association may pay dividends to a member on stock credits, which were of record during the dividend period but which have been repurchased prior to the dividend paying date when such person still owns a small amount of stock credits on the dividend paying date, a more difficult issue is posed. There can be no doubt that such person qualifies as a member of the building and loan association, inasmuch as the person still owns some stock. Thus, the requirement of membership under Section 1151.52, Revised Code, is met. This statute also provides in part as follows:

“* * * Such dividends shall be paid to such members at such time and in such manner, in conformity with sections 1151.02 to 1151.55, inclusive, of the Revised Code, as such constitution and bylaws provide. * * *”

This would indicate that a building and loan association may pay dividends to its members in any way authorized by its constitution and bylaws provided such methods do not conflict with Sections 1151.02 to 1151.55, Revised Code. A building and loan association, therefore, would be able to pay prorata dividends on stock credits repurchased during the dividend period provided the owner of such stock credits remains a member of the association through the dividend paying date unless something in the enumerated sections of the Revised Code prohibit such form of payment.

The term “stock credit” is defined in Section 1151.20, Revised Code, which is cited above in your request. This definition does not, however, aid in providing a solution to your second question, as no reference is made in that section to the repurchase of stock credits or the payment of dividends.

Turning next to Section 1151.22, Revised Code, we come to a section which causes greater difficulty. This section, which is quoted in part in your request, provides that dividends on stock credits shall be discon-

tinued to the extent of the amount of application for repurchase submitted by a stockholder. From this, the question arises whether the discontinuance of the dividends is to apply to the entire dividend paid, or only to the time after the application for repurchase has been made. While no case law or other authority is available on this point, the history of the section casts some light on the legislative intent behind it. This statute was enacted in 1934 during the depths of the depression as former General Code Section 9651. At that time it was a common occurrence for stockholders of building and loan associations to apply for the repurchase of stock credits only to be barred from receiving payment by association by-laws, which held that repayment would be contingent upon the financial condition of the particular association. The question would then arise, whether a stockholder was entitled to dividends declared during the period after applying for repurchase and before the date of actually receiving payment. This exact question arose in the case of *Fredrick v. The Mutual Building & Investment Co., et al.*, 128 Ohio St., 474. In this case the court construed Section 9651, General Code, before its 1934 amendment and held that the stockholder plaintiff was entitled to dividends declared after the date of the filing of her application for repurchase and that, if in the discretion of the directors of the association the application for repurchase of a member is not acted upon, his right to dividends persists as an incident of continued stock ownership. The 1934 amendment, however, changed the application of this Supreme Court decision by providing that even though a stockholder who filed a written application for the repurchase of his stock credits still remained a stockholder, dividends upon such stock credits to the extent of the amount of the application for repurchase should be discontinued while the application for repurchase remained pending.

This factual background provides a basis for understanding the present Section 1151.22, Revised Code, and indicates, as does a literal reading of the statutory language itself, that this section does not apply to the second question which you pose. It follows, therefore, that since no other statute appears to bar the right of a building and loan association to enact bylaws which would permit the declaration of pro-rata dividends on stock credits of members repurchased during the particular dividend period, any building and loan association in Ohio may properly enact such bylaws.

Turning to the second portion of your inquiry, and examining the three sample bylaws which you have cited, it appears to me that the

declaration of pro-rata dividends on repurchased stock credits may properly be paid only under the first of the quoted bylaws.

It is, therefore, my opinion and you are accordingly advised that 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.

Respectfully,
MARK MCELROY
Attorney General