

vidual members of said board of county commissioners. I further find upon examination of said deed, that the form of the same is such that it is legally sufficient to convey unto the State of Ohio a fee simple title to the above described property free and clear of all encumbrances whatsoever.

As a part of the necessary files relating to the purchase of the above described property there has been lately submitted to me a contract encumbrance record executed by the Director of Finance, as required by the provisions of Section 2288-2, General Code. This certificate thus executed by the Director of Finance as Contract Estimate Record No. 1, shows that there are sufficient unencumbered balances in the proper appropriation account to pay the balance of the purchase price of this property which balance set out in said encumbrance record is the sum of \$430,171.22.

The contract encumbrance record above referred to, contains the statement to the effect that the purchase of the above described property and the payment therefor of said sum of \$430,171.22, was approved by the Controlling Board under date of September 6, 1933. As to this, I may say that I do not have at hand a copy of the resolution of the Controlling Board authorizing the purchase of this property and the release of the money necessary to pay the balance of the purchase price of the same but assuming that the purchase of this property and the release of the necessary money therefor have been approved by the Controlling Board, the facts as to which you are doubtless advised, I hereby approve said abstract of title, warranty deed and other files relating to the purchase of this property and herewith return the same to you for the issuance of the necessary voucher and warrant covering the purchase price of the property, thereby closing the transaction.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1700.

BUILDING AND LOAN ASSOCIATION—LIQUIDATION—AFTER PAYING ALL CREDITORS BOARD OF DIRECTORS MAY EXCHANGE REMAINING ASSETS FOR SECURITIES OF OTHER CORPORATIONS, AND DISTRIBUTE SAME TO ITS SHAREHOLDERS WHEN.

SYLLABUS:

A board of directors of a building and loan association in liquidation pursuant to the provisions of Section 687-21, General Code, has the power, subject to the approval of the Superintendent of Building and Loan Associations, after paying all creditors, to exchange the remaining assets of such association for shares of stock or other securities of other corporations, and distribute such securities to its shareholders in proportion to their interest in such remaining assets.

COLUMBUS, OHIO, October 9, 1933.

HON. PAUL A. WARNER, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I wish to submit the following proposition for your formal opinion:

An Ohio building and loan association pursuant to the request of its board of directors has been ordered by the Superintendent of Building and Loan Associations, with the written approval of the Director of Commerce, to proceed to liquidate its business and property. The directors of the association thus placed in charge of its affairs for liquidation, propose to transfer such of its assets as are eligible as investments of a Federal Savings and Loan Association to such an association to be organized, the stock of such federal association received as consideration therefor to be distributed pro rata to the stockholders of the present association.

At the same time the balance of the association's assets are to be transferred to a mortgage loan company to be organized, in consideration of which the mortgage loan company will issue its entire capital stock, fully paid up and probably nominal in amount, to the federal association as trustees for the stockholders of the present association; it will also pay off in full all savings depositors of the present association and all other indebtedness thereof, so that all interests other than those of the present association's stockholders will be eliminated; it will undertake forthwith to pay to the present stockholders a cash dividend in an amount to be determined and will issue to the stockholders of the present association trust receipts evidencing their proportionate ownership in the equities of its assets.

Provided that the written consent and approval of the Superintendent of Building and Loan Associations of the State of Ohio first be obtained, has the board of directors under the provisions of General Code Section 687-21 and under the provisions of the General Corporation Act, governing dissolved corporations, the right and power legally to effect the transfers of assets outlined above?"

No approval of any specific plan is requested in your communication and none shall be rendered herein. Your inquiry is solely one of the powers of directors in the execution of such a plan.

Section 687-21, General Code, as enacted by the 90th General Assembly, provides that in the event of the dissolution of a building and loan association as therein set forth, the issuance of your order requiring such association to liquidate "shall have the effect of an election of all the shareholders of such association to dissolve the same * * *, but, notwithstanding the issuance of such order, the board of directors of such association shall exercise all other powers vested by the general corporation act in the directors of a corporation electing to dissolve."

In order to determine the question of the authority to effectuate the proposed purposes, reference must be had to the pertinent provisions of the General Corporation Act with respect to dissolution pursuant to vote of the stockholders as contained in Sections 8623-79, et seq., of the General Code. Section 8623-82, General Code, confers broad powers upon a board of directors in the winding up of the affairs of a dissolved corporation; after enumerating a number of specific powers, the directors are authorized to "do and perform all acts necessary or expedient to the winding up of the corporation."

Section 8623-84 is directly pertinent to your inquiry. This section provides as follows:

"After paying or adequately providing for, or for the purpose of providing for, the payment of the liabilities and obligations of such corporation, the board of directors may sell, lease, exchange or otherwise dispose of or put in trust all or substantially all or any part of the remaining assets of such corporation upon such terms and conditions and for such considerations, which may be money, stocks, bonds or other instruments for the payment of money or other property or other considerations as such board may deem reasonable or expedient, and may distribute such considerations or the proceeds or avails thereof or trust receipts or certificates of beneficial interests among the shareholders in proportion to their interests therein, or the board of directors may order and make a distribution in kind of all or any part of the remaining assets of such corporation.

In the absence of wilful fraud, any determinations of value made by the board of directors for any of the purposes within this section shall be conclusive.

Without limiting the authority of the board of directors, any action within the purview of this section which shall be authorized, ratified or approved by the holders of shares entitling them to receive two-thirds of the value of such remaining assets shall be conclusive for all purposes upon all shareholders."

In your communication you state that it is proposed to pay all certificate of deposit holders in full, as well as all other creditors of the corporation. Authority is clearly contained in the foregoing section to exchange the remaining assets, after paying all creditors, for stocks and distributing such stocks among the shareholders in proportion to their interests in these remaining assets. The clear language of this section compels an affirmative answer to your question.

It should be observed that the foregoing conclusion might be inapplicable to certain building and loan associations in view of the varied and broad provisions often contained in their constitutions and by-laws with respect to the status of stockholders. It is sufficient to say that in issuing your approval of any such transactions, consideration should be given to the constitution and by-laws of the association under consideration.

It may be further observed that Amended House Bill No. 263 of the 90th General Assembly, of which Section 687-21 is one of the sections, places a great responsibility upon you as Superintendent of Building and Loan Associations in approving transactions of the nature outlined in your communication, and it is my judgment that you have full authority, before issuing your approval of such transactions, to satisfy yourself as to the propriety thereof.

As hereinabove indicated, I am expressing no opinion as to whether your approval should be issued in the instant case, this being a matter entirely within your discretion.

Summarizing, it is my opinion that a board of directors of a building and loan association in liquidation pursuant to the provisions of Section 687-21, General Code, has the power subject to the approval of the Superintendent of Building and Loan Associations, after paying all creditors, to exchange the remaining assets of such association for shares of stock or other securities of other corporations, and distribute such securities to its shareholders in proportion to their interest in such remaining assets.

Respectfully,

JOHN W. BRICKER,
Attorney General.