

**OPINION NO. 67-098****Syllabus:**

(1) The Superintendent of Building and Loan Associations does not possess the authority to require that the name, location, purpose and authorized capital of such an association or corporation be stated in its Constitution since the same is required to be set forth in the Articles of Incorporation.

(2) An association may not revoke, repeal or amend provisions of its Constitution of Articles of Incorporation without prior approval of the Superintendent of Building and Loan Associations.

(3) The shareholders and/or members of an association do not have the power to adopt a constitution without submission to and approval of the Superintendent of Building and Loan Associations.

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**To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, November 7, 1967**

Your request for my opinion regarding an interpretation of statutes governing the activities of the Division of Building and Loan Associations reads as follows:

"1. Inasmuch as the statutes provide that the constitution of a state-chartered association is subject to the approval of the Superintendent of Building and Loan Associations, does the Superintendent possess the authority to require that the name, location, purpose and authorized capital of such corporation be stated in its constitution and that said provisions shall conform with the Articles of Incorporation?

"2. Can an association revoke or repeal provisions of its constitution without approval of the Superintendent of Building and Loan Associations?

"3. Do the shareholders of a state-chartered

association have the powers to adopt and place into effect a constitution, 'which in their judgment best suits the requirements of the company' without submission to and written approval of the Superintendent of Building and Loan Associations?"

In view of the fact that the statutes appear to be quite clear and dispositive of the latter questions, I am going to answer your questions in inverse order.

Section 1151.08, Revised Code, provides in part as follows:

"When capital stock is mentioned in the articles of incorporation of a building and loan association, it shall be deemed to mean the authorized capital. The organization of the association may be completed and business commenced when a sum equal to five per cent of such authorized capital is subscribed and paid in and the names and addresses of its officers and not less than two copies of its constitution and bylaws have been filed with and approved by the superintendent of building and loan associations. No such corporation shall transact any business, except such as is incidental and necessary to its preliminary organization, until it has been authorized by the superintendent to do so. No amendment to such constitution or bylaws shall become effective until approved by the superintendent. \* \* \*"

(Emphasis added)

Section 1151.47, Revised Code, provides in part as follows:

"A building and loan association may provide, by a constitution adopted by its members and bylaws adopted by its board of directors, for the proper exercise of the powers granted in sections 1151.02 to 1151.55, inclusive, of the Revised Code, and for the conduct and management of its affairs.

"Proposed amendments to the constitution and bylaws shall be submitted to the superintendent of building and loan associations for approval on forms prescribed by him. The superintendent shall approve or disapprove such amendments and notify the association of his action within ninety days from the time received by him. If the superintendent disapproves of such amendment, he shall state the reasons therefor in his notice of disapproval.

" \* \* \*

\* \* \*

\* \* \*"

(Emphasis added)

It is self evident from the aforementioned statutes that a building and loan association may provide a constitution adopted by its members, copies of which shall be filed with and approved

by the Superintendent of Building and Loan Associations. Consequently, the answer to Question Three (3) is no.

In response to the second question, it is noted from the provisions of Sections 1151.08 and 1151.47, supra, that all proposed amendments to the constitution and bylaws of a building and loan association must be submitted to the Superintendent of Building and Loan Associations for approval and that no such amendment shall become effective until approved by the Superintendent. In State, Ex Rel., v. LeBlond, 108 Ohio St. 41, the court in interpreting the constitutionality of certain legislation stated at page 50 as follows:

"A broad definition of the word 'amendment' would include any alteration or change; \* \* \* "

Likewise, I believe that any addition to, the striking out of, or the making of some change in any particular section of the constitution and/or bylaws of an association would be construed as an "amendment" as set forth in the aforementioned statutes. Therefore, the answer to Question Two (2) is no.

To have come to any other conclusion in response to your second and third questions would not have been consistent with the whole legislative intent of strictly supervising and controlling said associations from their creation to dissolution for the protection of their members, as well as the general public. In State, Ex Rel., v. C. P. Court, 124 Ohio St. 269, the court in considering the dissolution and liquidation of a building and loan association, stated at page 275 as follows:

"\* \* \* Recognizing the character of such institutions, and the purpose they seek to serve, the Legislature of this state has enacted statutes governing, controlling and regulating them, and, in language that cannot be misunderstood, has wisely made provision for their supervision at all times and under all circumstances and conditions, \* \* \* "

To answer your first question we must first look at Section 1151.02, Revised Code, which provides as follows:

"A building and loan association may be organized and conducted under the general laws of this state relating to corporations, except as otherwise provided in sections 1151.02 to 1151.55, inclusive, of the Revised Code. Upon receipt of articles of incorporation, and all papers relating thereto, for such an association, the secretary of state shall forthwith transmit to the superintendent of building and loan associations a copy of such articles and shall not record them until authorized to do so by the superintendent."

Section 1701.04, Revised Code, which is a provision appearing within the General Corporation Law of the state, pro-

vides in part as follows:

"(A) Three or more natural persons, a majority of whom are citizens of the United States, may form a corporation by subscribing and thereafter filing in the office of the secretary of state articles of incorporation which shall set forth:

"(1) The name of the corporation, which shall end with or include 'Company,' 'Co.,' 'Corporation,' 'Corp.,' 'Incorporated,' or 'Inc.';

"(2) The place in this state where the principal office of the corporation is to be located;

"(3) The purpose or purposes for which the corporation is formed;

"(4) The authorized number and the par value per share of shares with par value, and the authorized number of shares without par value, except that the articles of a banking, safe deposit, trust, or insurance corporation shall not authorize shares without par value; the express terms, if any, of the shares; and, if the shares are classified, the designation of each class, the authorized number and par value per share, if any, of the shares of each class, and the express terms of the shares of each class;

"(5) The amount of stated capital with which the corporation will begin business, which shall not be less than five hundred dollars.

" \* \* \* \* \* \* \* \* \* \*"  
(Emphasis added)

It is noted that Section 1151.08, supra, sets forth specific requirements as to the minimum amount of authorized capital for an association. Further, Section 1151.03, Revised Code, generally sets forth the provisions whereby the Superintendent may refuse to certify such an association or corporation to the Secretary of State. Since the information requested by the Division of Building and Loan Associations is already required to be included in the Articles of Incorporation, I can see no purpose and would consider it unreasonable to suggest that an association be required to reiterate the same in their Constitution. If the association voluntarily sets forth these documents in its Constitution, then they must be consistent with the Articles of Incorporation and the statutory authority provided for Building and Loan Associations.

The Superintendent has adequate control in that the Articles of Incorporation and the Constitution of an association, as well as their Bylaws, must all be individually approved before the commencement of business, plus the fact that any amendments to any of these items must be approved by the

Superintendent before they shall become effective. In State, Ex Rel., v. Myers, 128 Ohio St. 619, the Syllabus provides as follows:

"Under the provisions of Section 9643, 9643-1, 9643-2 and 9643-3, General Code, Sections 115.02, 1151.03, and 1151.04, Revised Code before a certificate of amendment to the articles of incorporation of a building and loan association or a certificate of reduction of its authorized capital may be filed or recorded with the Secretary of State, the authorization of the Superintendent of Building and Loan Associations must be secured."

Therefore, the answer to Question One (1) is also no.

In view of the above, I am of the opinion that:

(1) The Superintendent of Building and Loan Associations does not possess the authority to require that the name, location, purpose and authorized capital of such an association or corporation be stated in its Constitution since the same is required to be set forth in the Articles of Incorporation.

(2) An association may not revoke, repeal or amend provisions of its Constitution or Articles of Incorporation without prior approval of the Superintendent of Building and Loan Associations.

(3) The shareholders and/or members of an association do not have the power to adopt a constitution without submission to and approval of the Superintendent of Building and Loan Associations.