6299

DEPOSIT GUARANTY ASSOCIATION:

1. NOT EMPOWERED TO GUARANTY PERMANENT STOCK OF MEMBER BUILDING AND LOAN ASSOCIATIONS—SECTION 1151.80 ET SEQ., RC.
2. EMPOWERED TO GUARANTY MONEYS ON DEPOSIT WITH MEMBER BUILDING AND LOAN ASSOCIATIONS—PASSBOOK — CERTIFICATE OF DEPOSIT — SECTION 1151.19 RC.
3. EMPOWERED TO GUARANTY WITHDRAWABLE SHARES, STOCK DEPOSIT ACCOUNTS OR RUNNING STOCK OF MEMBER BUILDING AND LOAN ASSOCIATIONS.

SYLLABUS:

1. A deposit guaranty association organized pursuant to the provisions of Section 1151.80, et seq., Revised Code, is not empowered to guaranty the permanent stock of member building and loan associations.

2. A deposit guaranty association organized pursuant to the provisions of Section 1151.80, et seq., Revised Code, is empowered to guaranty moneys on deposit with member building and loan associations pursuant to the pertinent provisions of Section 1151.19, Revised Code, whether evidenced by passbook or certificate of deposit.

3. A deposit guaranty association organized pursuant to the provisions of Section 1151.80, et seq., Revised Code, is empowered to guaranty withdrawable shares, stock deposit accounts or running stock of member building and loan associations.

Columbus, Ohio, February 24, 1956

Hon. N. J. Dziamba, Deputy Superintendent of
Building and Loan Associations, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion wherein you inquire as to the power of a guaranty deposit association formed pursuant to Section 1151.80 et seq., Revised Code, to guaranty (a) withdrawable shares (b) stock deposit or running stock (c) passbook deposits (d) certificates of deposit and (e) permanent stock.

Before proceeding to answer the questions raised, it might be well for purposes of clarity to explore the nature and origin of the various classes of accounts or funds mentioned above within the frame of reference of the capital structure for building and loan associations authorized under the law of Ohio. As I comprehend it, there may be three types of building and loan associations (hereinafter referred to as "associations") organized under Chapter 1151, Revised Code. These consist of (1) associations having permanent stock (2) associations having withdrawable shares and (3) associations having both permanent stock and withdrawable shares.

The permanent stock association is precisely what the name implies. The holder of permanent stock is in relatively the same position as any shareholder in a stock corporation under the general corporation law. He has no right conditioned or otherwise, to call on the association to repurchase his stock nor has he any right to withdraw from the association money paid therefor. Generally speaking, his rights as against the capital

funds of the association exist only to the extent of his pro rata share in the assets of the corporation in the event of liquidation after all other lawful claims and demands have been satisfied.

In an association having withdrawable shares only, the shareholder or stock depositor enjoys a somewhat different position. He has, if the by-laws so provide, an unquestioned, albeit conditional, right to require the association to repurchase a share issued to him (commonly referred to as a withdrawable share) or to repay moneys credited to him in a stock deposit account as payment on account of his stock subscription (commonly referred to as a running share or stock deposit.) As I have stated, this right is conditioned upon the provisions of the by-laws and constitution of the association as well as upon the restrictive provisions of the law relative to such repurchases. See Section 1151.22, Revised Code.

The distinctions noted with respect to the first two categories apply, in so far as pertinent, to the association having both permanent stock and withdrawable shares.

All three enumerated types of associations may receive "money on deposit" as authorized by Section 1151.19, Revised Code, and permit the withdrawal thereof "upon such terms as it provides" pursuant to Section 1151.23, Revised Code. The effect of these two sections is to permit the receipt by the association of moneys evidenced by passbook or the special contract contemplated by a certificate of deposit, assuming the constitution and by-laws of the association provide for same. In any event, the result of the transaction is the creation of a pure debtor and creditor relationship with none of the muniments or liabilities of ownership inherent in the withdrawable shareholder or permanent stockholder.

The 101st General Assembly in Amended Senate Bill No. 144, enacted a law relative to the creation and organization of deposit guaranty associations, Sections 1151.80 to 1151.92, Revised Code. Such deposit guaranty associations (hereafter referred to as guaranty associations) were empowered under Section 1157.87, Revised Code, to, inter alia:

> " * * * (A) Assure the liquidity of member building and loan associations;
>
> "(B) Guaranty the deposits in member building and loan associations; * * *."

The sole question with which I am presented is whether or not the powers enumerated above permit the guaranty of any or all of the categories mentioned in your letter of inquiry.

At the outset we can eliminate from consideration permanent stock. There being no *obligation,* conditional or otherwise, of repayment or repurchase, there is nothing to form the subject of a contract of guaranty. The right of such permanent stockholders to share pro rata in the assets after satisfaction of all lawful claims and demands is not an obligation of the corporation, as such, but arises by operation of law as a necessary incident of ownership.

Conversely, I am equally of the conviction that such guaranty associations are empowered to guaranty moneys on deposit of member associations whether evidenced by passbook or certificate of deposit. I can discern no substantial difference in legal effect in so far as the creation of an immediate debtor-creditor relationship is concerned, however qualified by the constitution and by-laws of the association or the special terms of a certificate of deposit.

The question then to be resolved is the status of the withdrawable moneys represented by withdrawable shares, so-called running stock, stock deposits or stock credits. For the purposes of this opinion, it would appear that these may be considered categorically.

Any consideration of this issue must be viewed in the light of the amendment to Section 1151.41, Revised Code, likewise enacted in Amended Senate Bill No. 144, supra, concurrently with the statutes relative to guaranty deposit associations. It provides as follows:

> *"A building and loan association may do all things necessary or proper to obtain the insurance of its stock, shares, certificates of deposit, or deposit accounts,* by the federal savings and loan insurance corporation under the 'National Housing Act' and amendments thereto, *by a deposit guaranty association organized pursuant to the provisions of sections 1151.80 to 1151.86, inclusive, of the Revised Code,* or as may be hereafter provided by law." (Emphasis supplied.)

It is self evident that this section is in *pari materia* with those sections dealing with deposit guaranty associations. It is equally apparent that the reference to (a) "stock" comprehends running stock or stock deposits and that (b) "shares" refers to withdrawable shares. It is inconceivable to me that the legislature enacted this amendment unless it was of the persuasion that the entity for whose creation it had otherwise provided was statutorily capable of performing the services which its member associations, were by virtue of the amendment, empowered to call upon it to render.

The sole remaining question is whether the word "deposit" as used in Sections 1151.80 et seq., supra, is susceptible to an interpretation which includes withdrawable shares and running stock without doing violence to the legal signification of that term. In resolving that question I am not aided by any blanket definition of the term "deposits" in those chapters of the Revised Code relative to building and loan associations.

It is interesting to note, however, that in the exercise of taxing powers, the legislature has seen fit to use the term in a generic rather than a restrictive sense. For example, Section 5701.05, Revised Code, in pertinent part defines a deposit as follows:

> "As used in Title LVII of the Revised Code, 'deposits' includes every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account, *certificates of running, or other withdrawable stock, or otherwise,* * * *." (Emphasis supplied.)

While I am not purporting to superimpose one statutory definition upon another, and unrelated, provision of the law, there is an indication that the term "deposit" may have a more comprehensive meaning other than to denote solely a debtor-creditor relationship where there are unmistakable indications that such was the legislative intent.

You have directed my attention to the case of Alter v. Security etc. Co., 10 Ohio Opinions, 389, wherein it was held that the term "deposit account" as employed in former Section 9652-1, General Code, in pertinent substance present Section 1151.24, Revised Code, did not apply to a running stock or stock deposit account so as to allow it to be set off against an obligation owed to the association by a member. This case merely recognized that a running stockholder was not a true creditor of the association, a distinction which has already been recognized herein and is, in fact, specifically recognized in Section 1151.22, Revised Code.

In any event a consideration of the Alter case in tempered by reference to a later appellate decision of Pyper v. Mutual Home etc., 12 Ohio Opinions, 280 (appeal dismissed 134 Ohio St., 345) wherein the observation is made that in the absence of insolvency (when rights of depositors would become superior to that of stockholders) and in the absence of provisions of the by-laws or constitution to the contrary, there is no substantial distinction in the withdrawal rights of withdrawable share accounts and deposit accounts.

It has also been suggested that inasmuch as various sections of the chapters of the Revised Code relative to building and loan associations employ the term "deposits," "stock," "stock credits," "money on deposit," and "stock deposits," disjunctively or conjunctively, it must be considered that the legislature should have observed the same plurality of terms in the law relative to guaranty associations had it intended its application to all withdrawable moneys. See Sections 1151.10, 1151.293, and 1151.19, Revised Code. It is, however, equally valid to assume that the term "deposits," used alone in the context of the law relative to guaranty associations, was employed in a comprehensive or generic sense. The latter conclusion would appear to be deserving of the greater weight in view of the authorization to member associations to make provisions for all withdrawable moneys as embodied in Section 1151.41, supra, which I have previously discussed.

Whatever legal distinctions may be observed in other, and indubitably proper, contexts the withdrawable shareholder, running stockholder or stock depositor has an undeniable right, however qualified, to a return of his moneys once the qualifications imposed by statute, and association constitution or by-laws are met. While concededly the resultant relationship is not that of a true debtor-creditor it is certainly in the nature thereof in the sense that upon compliance with statutory and contractual conditions precedent there is a legally enforceable chose in action for an ascertained and ascertainable sum certain in money.

Any conclusions that I have reached in the foregoing respects must of necessity be guarded and confined to the precise limits of the question presented, i.e., the guaranty powers of deposit guaranty associations under Sections 1151.80, et seq., supra. Both the statutes relative to building and loan associations and the public interest require and demand that the public be not misled or misinformed as to the distinct differences in the legal rights and liabilities of the running stock holder, stock depositor, or withdrawable shareholder on the one hand and the depositor of moneys under a contract where a pure debtor-creditor relationship ensues.

Accordingly, it is my opinion and you are advised that:

1. A deposit guaranty association organized pursuant to the provisions of Section 1151.80, et seq., Revised Code, is not empowered to guaranty the permanent stock of member building and loan associations.

2. A deposit guaranty association organized pursuant to the provisions of Section 1151.80, et seq., Revised Code, is empowered to

guaranty moneys on deposit with member building and loan associations pursuant to the pertinent provisions of Section 1151.19, Revised Code, whether evidenced by passbook or certificate of deposit.

3. A deposit guaranty association organized pursuant to the provisions of Section 1151.80, et seq., Revised Code, is empowered to guaranty withdrawable shares, stock deposit accounts or running stock of member building and loan associations.

Respectfully,
C. WILLIAM O'NEILL
Attorney General