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**SAVINGS AND LOAN ASSOCIATIONS: Reserve shares.**

When the legal reserve account equals and exceeds 50% of the outstanding reserve shares, such reserve shares become ineligible to receive earnings in excess of the maximum dividends paid and credited all other classes of stock.

A savings and loan association cannot issue additional reserve shares subsequent to the effective date of Act 148, PA 1958.

No. 4318

February 21, 1966.

Hon. James M. Hare  
Secretary of State  
Lansing, Michigan

You advise me that only one savings and loan association invoked Sec. 5(e) of the Savings and Loan Act, Act 50, P.A. 1887, as amended, C.L.S. 1961 § 489.5; M.S.A. 1957 Rev. Vol., 1963 Cum. Supp. § 23.545, and issued reserve shares.

Previous to 1958, Sec. 5(e) of the Savings and Loan Act provided in pertinent part:

"Reserve shares may be issued in establishing new associations and may not be withdrawn until after all liabilities of the association have been satisfied, including the paid in value of all other classes of stock, and which reserve shares may receive as dividends, after all expenses have been paid, earnings not exceeding two [2] per cent over the maximum dividends paid and credited all other classes of stock, until the reserve fund hereinafter provided for reaches [50] per cent of the said reserve shares; and may be accumulated in addition to the reserve fund requirements hereinafter provided, which shares if issued shall be provided for in the articles of incorporation at the time of incorporation. \* \* \*. That associations now organized may make application to the secretary of state to issue reserve shares. Upon the filing of such application the secretary of state shall then procure the facts concerning the financial standing and eligibility of such association, and if after consideration of such evidence the secretary of state deems it advisable to permit such association to issue reserve shares he may do so subject to the limitations herein set forth."

These shares were not withdrawable until after all liabilities of the new association had been satisfied or until the legal reserve fund created out of earnings equal 50% of reserve shares.

I understand that the one new organization issuing said reserve shares was incorporated in 1945 and issued such shares periodically during the years 1945 to 1956. No other applications were processed.

The legal reserve (loss reserve) account in this association as of June 30, 1963, in the amount of \$12,883, not only exceeded 50% of reserve shares but virtually equalled the then outstanding total reserve shares. No additional reserve shares were issued after 1957 until July, 1963, when an additional \$2,100 were issued, making the current outstanding total at \$15,000.

You have asked my opinion on the following questions:

"1. At such time as legal reserve account equalled and exceeded 50% of the outstanding reserve shares did such reserve shares become ineligible to receive earnings in excess of the maximum dividends paid and credited all other classes of stock?

"2. May the association legally issue additional reserve shares subsequent to the effective date of Act 148, Public Acts of 1958?"

In 1958 the provision authorizing the issuance of such reserve shares was deleted from the act by Act 148, P.A. 1958, which has now been superseded by Act 156, P.A. 1964, as amended, being Act 118, P.A. 1965, M.S.A. Cur. Mat. § 23.540(110) et seq., and this act likewise has no provision for reserve shares.

Sec. 301 of the 1964 act provides in part:

"Dividends shall be declared in accordance with the provisions of this act. Except as to short-term accounts and accounts of \$50.00 or less, no association shall prefer one of its savings accounts over any other savings account as to the right to participate in dividends as to time or amount."

You have advised me orally that these reserve shares are peculiar to the State of Michigan, although plans in other states have somewhat the same purpose. For example, the "Guarantee Capital Stock Plan" discussed in *Sundheim-Building and Loan Associations (Third Edition)*, page 18:

"This guarantee stock must be replenished in case of impairment. In return for the risk involved those who supply this capital receive all the earnings of the association over and above the amount required to pay dividends to other classes of stock and have actual control of the affairs of the association. \* \* \* The issuance of this kind of stock must be expressly authorized by statute."

In opinion No. 1433, O.A.G. 1951-1952, page 302, we concluded that reserve shares should be classified as invested shares and not as legal reserves.

Therefore, your first question is answered "Yes" and your second question "No."

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*Attorney General.*