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**SAVINGS AND LOAN ASSOCIATIONS: Federal -- Participation in State
Guaranteed Loan Program.
MICHIGAN HIGHER EDUCATION ASSISTANCE AUTHORITY:
Loans by Federal savings and loan associations.**

Federal savings and loan associations may make loans to the Michigan Higher Education Assistance Authority as they are financial institutions within the meaning of Act 77, P.A. 1960.

No. 4409

March 12, 1965.

Dr. Lynn M. Bartlett, Chairman
Michigan Higher Education Assistance Authority
906 Prudden Building
Lansing, Michigan 48933

You have asked my opinion as to whether a Federal savings and loan association can participate in the State Guaranteed Loan Program. You point to two provisions of the Michigan Higher Education Assistance Authority Act, Act 77, P.A. 1960¹ as prompting your inquiry:

1. Sec. 7(c), which reads:

"Sec. 7. The authority may: * * *

"(c) Enter into contracts with financial institutions, upon such terms as may be agreed upon between the authority and the institution, to provide for the administration by the institutions of any loan, or guarantee of a loan, made by the authority, including applications therefor and repayment thereof."

2. Sec. 10, which reads:

"The authority shall be subject to the supervision and examination of the state banking commissioner, but shall not be deemed to be a banking organization nor required to pay a fee for supervision or examination. The authority shall make an annual report of its condition to the governor and the legislature within 60 days after the legislature convenes."

Federal savings and loan associations are created under the provisions of the Federal Home Loan Act, 12 U.S.C.A. § 1464 and 1964 Cumulative Annual Pocket Part. As last amended Subsection (c) of Section 1464 contains the following provision:

"Without regard to any other provision of this subsection, any such association is authorized to invest in loans, obligations, and advances of credit (all of which are hereinafter referred to as 'loans') made for the payment of expenses of college or university education, but no association shall make any investment in loans under this paragraph if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed 5 per centum of its assets."

¹ C.L.S. 1961, § 390.951 et seq.; M.S.A. 1963 Cum. Supp. § 15.2097(1) et seq. (Sec. 7 was amended by Act 218, P.A. 1964, but not the portion quoted above.)

Federal savings and loan associations are required to file annual reports with the Michigan Secretary of State and pay annual privilege fees under Section 442 of the Savings and Loan Association Act of 1964, being Act 156, P.A. 1964.²

The statutory power has been implemented by regulation of the Federal Home Loan Bank Board dated December 3, 1964, (12 C.F.R. Part 545):

“§ 545.8-1 *Educational loans.*

“Any Federal association is authorized to invest in loans, obligations, and advances of credit (all of which are hereinafter referred to in this section as ‘loans’) made for the payment of expenses of college or university education, but no Federal association shall make any investment in loans under this section if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed 5 percent of its assets. Such loans may be secured, partly secured, or unsecured, and the association may require a comaker or comakers, insurance, guaranty under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-time student solely for the payment of expenses of college or university education. For the purpose of this section, the term ‘college or university education’ means education at an institution which provides an educational program for which it awards a bachelor’s degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree.”³

To answer your first question it is necessary to determine whether a Federal savings and loan association is a “financial institution” within the meaning of Sec. 7(c) of Act 77.

There is no definition of “financial institution” in Act 77, supra. However, at the same legislative session in 1964 in which Section 7 of foregoing Act 77 was amended, the legislature enacted Act 284 and within the definition of “financial institution” as used in Section 6 (4) of Chapter 2 thereof included savings and loan associations. Had the legislature intended a different meaning to the term “financial institution” so as to exclude savings and loan associations therefrom in Section 7 of Act 77 as last amended by Act 218, P.A. 1964, it would have expressed such intent.

Webster’s Third New International Dictionary defines “financial institution” as “an enterprise specializing in the handling and investment of funds (as a bank, trust company, insurance company, *savings and loan association*, or investment company).” (Emphasis supplied)

In the case of *Second Federal Savings & Loan Association of Cleveland v. Evatt*, 49 N.E. 2d 756, 758, 141 Ohio St. 616, it was held that where a federal savings and loan association made a loan secured by a construction mortgage and placed the amount thereof to the credit of a due-borrowers account, credits in due-borrowers account were “deposits,” which associa-

² M.S.A. Cur. Mat. § 23.540(442).

³ Federal Register, Vol. 29, No. 239, December 9, 1964, p. 16856.

tion, being a "financial institution" within statutory definition, was required to report for taxation. See, also *Ohio Citizens Trust Company v. Evatt*, 63 N.E. 2d 912, 914, 146 Ohio St. 30.

It is my opinion that a Federal savings and loan association is a "financial institution" within the meaning of Act 77 and may make Michigan Higher Education Assistance Authority guaranteed loans.

The fact that Sec. 10 of Act 77 states that the Authority shall be subject to the supervision and examination of the State Banking Commissioner who would not have supervision of Federal savings and loan associations, would not have any effect on the conclusion reached in this opinion. It is the Authority that the Commissioner supervises and examines and not the lending institution.

FRANK J. KELLEY,
Attorney General.

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**CONSTITUTIONAL LAW:
SCHOOL BONDS:
MUNICIPAL FINANCE COMMISSION:**

Article 9, § 16, Michigan Constitution of 1963, requires school districts to borrow and State to lend sufficient sum to cover debt service payments on qualified bonds of school districts. Although this is not a pledge of full faith and credit of the State, the Municipal Finance Commission may and must enforce the duty of the district to borrow and the State to lend such sum.

No. 4422

March 12, 1965.

Hon. Sanford A. Brown
State Treasurer
Lansing, Michigan

You have asked in your letter of February 5 whether Article IX, § 16 of the Michigan Constitution of 1963 pledges the full faith and credit of the State to the payment of principal and interest of qualified school bonds.

Article IX, § 16 of the Michigan Constitution of 1963 provides in pertinent part as follows:

"The state * * * may borrow from time to time such amounts as shall be required, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of making loans to school districts as provided in this section.

"If the minimum amount which would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as finally equalized, or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall lend the excess amount to the school district for payment of principal and