

## Opinion No. 62-136

October 31, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** Mr. Keith E. Moore, State Bank Examiner, State Banking Department, Santa Fe, New Mexico

### QUESTION

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Does the limitation on investment in real estate to five percent of total resources which is imposed on building and loan association include the real estate and premises which house the association?

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

The controlling statute in resolving this question is the following portion of Section 48-15-5, N.M.S.A., 1953 Compilation:

"Such corporation may, however, employ a portion of its capital stock, not exceeding five per cent of its total resources in amount at any one time, **in the purchase of real estate and the erection of buildings thereon for rent, or otherwise.**" (Emphasis added).

The use of the words "or otherwise" at the conclusion of the above-quoted provision makes it all-inclusive insofar as the purchase of real estate and the erection of buildings thereon is concerned. And building and loan associations can purchase real property only to the extent authorized by statute. **Caldwell Building and Loan Association v. Henry**, N.J., 185 Atl. 394.

When we keep in mind the fact that the real purpose of building and loan associations is not speculation in real estate, the limitation contained in Section 48-15-5, supra, even though applying to the association's office property as well as other real property, appears to be quite reasonable. See **Thompson on Building Associations**, § 112. Some States are even more restrictive and permit building and loan associations to purchase only the amount of real property that is necessary to carry on the business,

i.e., property to house the association's office. See **State Savings and Loan Association v. Bryant**, Or., 81 P. 2d 116.

It should be noted that Section 48-15-5, supra, does not impede any of the association's functions since this section also contains a provision permitting building and loan associations to:

" . . . Use such portion of its capital as may be necessary to purchase at any sale, judicial, public or private, any real estate upon which such corporation may have, or hold, any mortgage, lien or other encumbrance, or in which it may have an interest, and the real estate so purchased may be conveyed, leased or mortgaged, at the pleasure of the corporation."

It is our conclusion that the total five-percent limitation heretofore discussed does include the real property and buildings which house the association.