

Opinion No. 62-58

April 11, 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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(1) May a mutual building and loan association pay dividends on a quarterly basis on any of the various classes of shares set forth in Section 48-15-3?

(2) May a capital stock building and loan association pay quarterly dividends on the various classes of shares set forth in Section 48-15-31?

CONCLUSIONS

(1) Yes, on any class except optional payment shares.

(2) Yes.

OPINION

ANALYSIS

The questions presented involve certain problems of statutory interpretation. At first glance it might seem that a mutual building and loan association in which a share in one class presumably costs the same amount as a share in any other class would be required to treat the classes of shares identically in regard to the time for payment of dividends. However, it does not appear to have been the legislature's intention to so require.

Section 48-15-3, N.M.S.A., 1953 Compilation, dealing with mutual building and loan shares, provides for three classes of shares, namely, installment shares, fully paid shares and optional payment shares. As amended by Chapter 78, Laws of 1933, Section 48-15-3, supra, provides as follows in respect to the various classes of shares:

"INSTALLMENT SHARES. Installment shares shall be shares upon which the shareholders shall be required to pay such dues and amounts, and at such times, as the bylaws may provide, and such payments shall continue on each share, until with the dividends allotted thereon it reaches its matured value or is withdrawn or canceled. **On**

all such issues the dividends shall be apportioned or credited equally to each share in the same class.

FULLY PAID SHARES. Fully paid shares shall be shares upon which the full par value of the shares may be paid at the time of the issuance thereof, and upon which the holder shall be entitled to a full participation in the net profits.

OPTIONAL PAYMENT SHARES. Optional payment shares shall be shares upon which amounts may be paid or withdrawn at any time, subject to the provisions of the by-laws. The rate of dividend on such shares shall in no event exceed six per centum per annum. **No dividend on such shares shall be paid or credited thereon more than once every six months.**" (Emphasis added).

Your first question is whether the limitation on paying dividends no oftener than every six months applies to all three classes of shares, or only to optional payment shares.

It is immediately noted that the limitation is not set out in a separate paragraph following the definitions of the various classes of shares. Rather, the limitation is contained only in the paragraph dealing with optional payment shares.

Prior to 1933, Section 48-15-11, N.M.S.A., 1953 Compilation made it mandatory that any kind or class of stock certificates or shares participate equally, share per share, **with every other kind or class** of stock certificates or shares in the earnings, profits and surplus assets thereof. It was also provided that no preference should be given to any kind or class of stock certificates or shares whereby the owner or holders thereof would receive any advantage over owners and holders of other stock certificates or shares of such an association in the distribution of net profits, **or otherwise.**

In 1933 the Legislature made two crucial changes in Section 48-15-11, supra, by adding the two phrases which are underlined below:

"It shall be unlawful for any mutual building and loan association to issue, sell or dispose of, or receive subscriptions, or pay for any kind or class of stock certificates or shares which shall not be entitled to participate equally, share per share, with every other kind or class of stock certificates or shares of such associations **in their respective classes** in the earnings, profits and surplus assets thereof in proportion to the amount of the monthly, or yearly dues to be paid thereon, or the subscription price thereof. And it shall be unlawful for any building and loan association through any by-laws, resolution or act of its stockholders, directors or officers, by any allowance in the way of salaries or perquisites, or otherwise, to give any preference to any kind or class of stock certificates or shares whereby the owners or holders thereof will receive any advantage over owners and holders of other stock certificates or shares of such association in the distribution of profits, or otherwise, **except as herein provided**" (Emphasis added).

It appears to us that by virtue of the 1933 amendment, a mutual building and loan association is only required by statute to treat equally the shares in a particular class. See Opinion No. 4562 (1943-44). Any other interpretation would render the 1933 amendment meaningless. While it might be unwise, as a matter of policy, for a mutual building and loan association to pay quarterly dividends on some classes of shares when they can only pay semiannual dividends on optional payment shares, such a practice is not prohibited by legislative enactment. See also 9 Am. Jur., Building and Loan Associations, § 17.

Your second question is whether capital stock building and loan associations may pay quarterly dividends on the various classes of shares which it issues. Our conclusion is in the affirmative.

The Capital Stock Building and Loan Association Act of 1959 (Section 48-15-26, et seq., N.M.S.A., 1953 Compilation (P.S.) provides authorization for the issuance of various types of shares upon which payment "at a stated rate of return shall be paid as determined from time to time by the Board of Directors." Section 48-15-31, N.M.S.A., 1953 Compilation (P.S.).

As we read Section 48-15-31, supra, it does not limit payments to semi-annual dates, nor for that matter to quarterly dates. It simply does not contain any legislative restrictions on payment dates.

Section 48-15-37, N.M.S.A., 1953 Compilation (P.S.) provides that the statutes relative to mutual building and loan associations shall apply where not inconsistent with the Capital Stock Building and Loan Association Act. Since neither the mutual act nor the capital stock act preclude the payment of quarterly dividends (except as to optional payment shares of mutual associations), there is no inconsistency between the two acts in this respect.

We conclude, therefore, that both mutual building and loan associations and capital stock building and loan associations are not prohibited by statutory enactment from paying quarterly dividends, with the exception of dividend payments on optional payment shares of mutual associations.