Opinion No. 12-897

May 24, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Hugh Williams, Chairman, State Corporation Commission, Santa Fe, N. M.

BUILDING AND LOAN ASSOCIATIONS.

Non-liability clause of stockholders in general incorporation law of 1905 does not apply to building and loan associations.

OPINION

*{*38}* I have before me by reference from your office the letter from Mr. Wm. J. Eaton of Clayton of the 21st instant in which he inquires whether the non-liability clause provided for in the incorporation law of 1905 can be filed with the articles of incorporation of a building and loan association, and thus limit the liability of stockholders. I am of opinion that the certificate of non-liability provided for by Section 23 of the Laws of 1905 cannot be extended to building and loan associations. That section refers to stockholders' liability for unpaid stock "issued by any corporation under the terms of this act," but the stock of building and loan associations is not issued under that act, nor can such an association be incorporated under the provisions of that act, as will be seen by reference to Section 5. It is true that Section 131 declares that the provisions of the act are applicable to building and loan associations, but the meaning of this section must be determined by the whole scope of the act, and the sort of corporations provided for and the kind of stock issuable by such corporations are entirely different from building and loan associations and the stock of such associations. This will be at once apparent by reference to Chapter 108 of the Laws of 1889, Section 2. It seems essential to the very existence of such a corporation that every share of stock is subject to a lien for payment of unpaid installments and other charges, and I see no way of reconciling this with an attempt to limit or do away with the liability of stockholders.

I return Mr. Eaton's letter herewith.