

The last sentence in Section 4 of Rule 11, defines sick leave as follows:

“Sick leave is defined as absence from duty of any employee because of personal illness, or legal quarantine, and the director may at any time demand of employees requesting pay for sick leave a medical certificate from the attending physician or a designated physician.”

The definition of sick leave, as set out in this rule, would preclude an employee from collecting pay for sick leave after termination of the relationship of employee and employer.

In answer to your question, it is my opinion that Mr. Wooden is entitled to vacation pay for the amount of days earned and not used but not to exceed eighteen days, even though his employment is terminated. He is not, however, entitled to collect pay for unused sick leave after his employment is terminated.

OCC:lp

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OFFICIAL OPINION NO. 33

May 4, 1949.

Mr. Hal T. Kitchen, Jr.

Supervisor Building and Loan Division,  
Department of Financial Institutions  
Indianapolis, Indiana

Dear Sir:

Pursuant to your request for an opinion as to the interpretation of the provisions of Section 258 (a) of the Indiana Financial Institutions Act, as amended, I beg to submit the following:

You state that:

“In a recent examination of a building and loan association, it was found that the association computes dividends according to the following example: A shareholder who has a balance of \$1000.00 on January 1st, withdraws \$500.00 on February 1st, and invests \$200.00

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on March 1st will receive a dividend the following June 30th on \$500.00. The association does not allow a dividend at two-thirds of the semi-annual rate on the \$200.00 invested on March 1st."

You ask for an opinion whether or not Section 258 (a) would require that the association give consideration to the amount invested on March 1st in computing the dividends in the example given. In other words, the question is whether building and loan associations organized and doing business in Indiana are required, under the above section to include amounts invested during the dividend paying period, in declaring dividends.

Building and loan associations are entirely creatures of law. They have no powers but those which the law has conferred upon them. They have no natural rights such as an individual or as an ordinary partnership. Their principal object is to create a loan fund for the benefit of their borrowing members, the underlying idea being that, by means of the system of small periodical payments provided, people of limited means will be enabled to become the owners of homes, and thrift, economy and good citizenship will thereby be promoted.

Acklin v. Peoples Sav. Assn. 292 F. 392.

They are in a class by themselves, different in character from any other financial institution, mutuality being the essential principle, and in the absence of express statutory authority they have no general powers to declare and pay dividends out of the profits of the business.

Latimer v. Equitable Loan and Inv. Assn., 78 Mo. App. 463 at 468;

State *ex rel.* Schonberg v. Home Mutual B & L Assn., 265 N. W. 701;

Endlich On Building Associations, Section 237.

As a corporation they have neither natural rights or capacity except such as are conferred by statute and if a power is claimed by them and they must find their authority within the statutes under which they operate or they have no such authority.

Nat'l. Home Bldg. & Loan Assn. v. Home Sav.  
Bk. 181 Ill. 34; 54 N. E. 619.

The subject association referred to was organized and began doing business prior to 1933. There are no provisions in the articles of incorporation or by-laws relating to the declaring of dividends that became a part of a contract between the association and its stockholders, so as to raise any constitutional questions, and therefore, the sole authority so far as declaring dividends are concerned, were the provisions contained in Section 24 of Chapter 151 of the Acts of 1911:

“Dividends shall be declared, credited or paid on the stock, in proportion to the amount paid in on such stock quarterly, semi-annually or annually as the by-laws may provide, but no dividends shall be declared, credited or paid by any such association except out of net profits collected, after deducting from the earnings all expenses of operation and losses sustained.”

Burns Indiana Statute 1926 Sec. 5100.

The statutes and above quoted section, under which said association was doing business, were superseded by the Indiana Financial Institutions Act of 1933, by which such associations were recognized as having the capacity to act as is possessed by natural persons, but limited and restricted them “to the performance of such acts only as are necessary, convenient and expedient to accomplish the purpose for which it is formed and such as are not repugnant to law.”

Chapter 40 Sec. 90 Acts of 1933 (Burns 18-502).

Under the provisions of said act, and subject to the limitations and restrictions therein contained, and in the articles of incorporation and by-laws, there was conferred upon every building and loan association the right to declare, credit and pay dividends, “in the manner hereinafter prescribed.” Sec. 252 (a) to issue shares of stock, \* \* \* “but no kind, class or series of stock shall have preference or priority over the other as to voting rights, or to share in the assets of the association upon liquidation or dissolution, or as to the payment of dividends, except as to the amount of such dividends and the time

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for the payment thereof as is hereinafter provided." Section 253 (Burns 18-2103).

The part of the section of the Act to which you direct attention, is as follows:

"The board of directors of any such association may annually, semi-annually or quarterly, but not more frequently, by resolution, declare and order dividends to be credited or paid upon shares of the capital stock of the association in proportion to amounts paid in upon such shares of stock *before and during the period* for which such dividend is declared, \* \* \* No dividend or earnings shall be credited or paid upon shares of stock withdrawn between the dividend paying dates." Section 258 (Burns 18-2108).

This section to which attention has been directed, embodies the essential elements of the 1911 Act relating to dividends, but is more specific in declaring certain rights, limitations and liabilities.

A shareholder, whether a borrower or non-borrower is liable to contribute to the expense or loss incurred during his membership. His right to withdraw exists only by statute or by-law and this right has been definitely established by statute. Upon proper notice of withdrawal his relation to the Association has changed to that of creditor, consequently, his liability ceases even though he may not as yet have been paid. There is therefore sound reason for the inclusion of the words "and during the period for which such dividend is declared."

Taking all of the above into consideration, I am of the opinion that said section 258 (a) of the Indiana Financial Institution Act as amended, should be strictly construed and that the unnamed Building and Loan Association is required to give consideration to the \$200.00 invested by the stockholder on March 1st in computing the dividends.

JHF:man:aa