DEPARTMENT OF FINANCIAL INSTITUTIONS: Building and Loan Associations—Right to purchase real estate subject to prior contract of sale.

November 28, 1944.

Opinion No. 98

Hon. Martin A. Quinn, Supervisor
Building and Loan Division,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of November 10th in which you ask my opinion upon the following question:

"In view of Section 18-2123 Burns' revised statutes, may a Building and Loan Association purchase real estate upon which there is an outstanding contract for sale, providing the contract purchaser becomes a member of the building and loan association?"

To paraphrase your question let us assume the following fact situation: A, the owner of real estate, has contracted to sell it to B upon an installment contract and B has already made one or more payments. May the building and loan company then purchase the seller's interest in the contract and receive the payments to complete the contract from the buyer?

Section 273 of Chapter 40 of the Acts of 1933 as amended (18-2123 Burns' 1933 R. S., Pocket Supplement) provides for loans and investments of building and loan associations. The pertinent parts of that section read as follows:

"Subject to the provisions of this act, any association may invest the funds received by it in the following, but in no other manner:

"* * *

"(d) In real estate as follows:

"* * *

"(4) Such real estate as the association may purchase for the purpose of selling, or improving and selling to its members upon contracts for the sale thereof at the cost price of such real estate and im-
improvements, where such contracts of sale and improvements to be erected upon such real estate are executed concurrently with or prior to such purchase or improvement. The total cost, contract price or value of such real estate, as carried on the books of the association, shall not at any one time exceed five (5) percent of the total assets of the association, without the written approval of the department.”

That section specifically provides that real estate may be purchased by a building and loan for sale or for improving and selling where the contract of sale and improvements are executed concurrently with or prior to such purchase or improvement.

In the construction of that language the proper rule to be applied is set forth in Garvin, Receiver v. Chadwick Realty Corporation (1937), 212 Ind. 499 at p. 506, and reads as follows:

“Words and phrases must be given their plain, ordinary, and usual meaning, unless a contrary purpose clearly appears, and in seeking the intent of an act effect must be given to every word and clause therein, if it is possible to do so. * * *”

The use of the words “prior to” in the section quoted would indicate that a contract of purchase may have been executed for said real estate prior to its acquisition by the building and loan association. And on principle, if the building and loan association may purchase real estate for sale to one who becomes a member, there is no greater risk to the solvency of such association by purchase of real estate upon which there is already a contract, providing the buyer becomes a member of the association. There is no reason to restrict the language used further than its actual import.

Consequently I am of the opinion that a building and loan association may purchase real estate upon which there is already an outstanding contract of purchase, providing the contract purchaser becomes a member of the building and loan association as provided in its by-laws, and the real estate is sold to the purchaser at cost as provided in the statutes. This opinion is not intended to apply to leases with options to purchase.