

**OPINION
60-21**

August 16, 1960 (OPINION)

BANKS

RE: Savings and Loan Associations - Use of Term "Deposits"

This is in reply to your letter in which you state that for a number of years and prior to your tenure in office your department had ruled as objectionable the use of the word "deposits" in advertising by the building and loan and savings and loan associations. You further state that you have received numerous objections to this provision. You then ask for a clarification or ruling whether the term "deposits" may be used by building and loan and savings and loan associations.

The term "deposits" has variable meanings depending upon the manner in which it is used. The verb "deposit" as defined by Webster means: "1. To lodge for safekeeping or as a pledge; to entrust; to put on deposit in a bank. 2. To lay down; to place; to put; to let fall." The term "deposit" as a noun is defined: "1. State of being deposited in trust or safekeeping. 2. That which is entrusted to the care of another; money lodged with a bank or banker, subject to order. Anything given as a pledge or security. 3. A depository. 4. That which is deposited, or laid or thrown down."

The term "deposit" is used in subsection 4 of section 7-0202 under the following circumstances:

. . . . The classes of shares which may be issued by an association are defined as follows:

. . . .

4. Optional payment shares shall be shares upon which amounts may be deposited or withdrawn at any time, subject to the provisions of this title. . . ."

The term "deposit" is again found in section 7-0406 in a headnote, DEPOSIT ACCOUNTS. Ordinarily headnotes are not part of the statute and serve no purpose in the interpretation and construction of the statute. However, the headnote here is part of the original act as found in subsection 9 of Chapter 94 of the 1931 Session Laws.

In reading the sections in which the term "deposit" is found, it is observed that the term is used with reference to the subject matter under consideration. This further shows that the term "deposit" has variable meanings depending upon the manner in which it is used.

We cannot as a matter of law say that the term "deposit" has become so identified with the banking business that it applies only to banks and the banking business. We might say that there is in this respect nothing sacred about the word "deposit." It is the manner in which it is used.

In Words and Phrases, Volume 12, page 267 excerpts of the following cases are found:

In re Puget Sound Savings and Loan Association, D.C. Wash.; 49 F.2d. 922, 924, we find the following:

Term 'deposit' or 'depositors,' used in connection with savings and loan associations, must be considered in sense of operation of association, since deposits furnished sole capital."

Also in Aberdeen Savings and Loan Association v. Chase, 289 P. 536, 544, 157 Wash. 351, 71 A.L.R. 232, it is found that:

The word 'depositor,' when used in reference to commercial bank, imports in law a different meaning from that which the word implies when used in connection with a savings and loan association, as in the latter case money placed by the depositor in the association is, to a great extent at least, capital for investment for the depositor's benefit, such deposit being 'the only capital which is invested and employed.'"

Also in Alter v. Security Building and Loan Co. of Defiance, 16 N.E.2d. 228, 233, 58 Ohio App. 114.

The word 'depositor,' as used in statutes dealing with building and loan associations, means one who places money with an association under such circumstances that the placer of the money becomes at once a creditor of the association, though payment by it may be postponed in accordance with the laws of the association or by contract between it and the placer, and the money so placed is a 'deposit.'"

It is therefore our opinion that the term "deposit" may be used by building and loan, and savings and loan associations without violating any provisions of law. However, if the term "deposit" is used in the same sense and meaning as used by banks and other institutions and in such manner as to convey the same thought and meaning as the term is used in the banking business, then it would be considered objectionable. In other words, if the term "deposit" is used contrary to the provisions of section 7-0406, then it would be considered objectionable. For that matter the provisions of section 7-0406 would control regardless whether the term "deposit" were used or some other language to convey the meaning which would be contrary to the provisions of said section. It is the manner and circumstances under which the term "deposit" is used which controls.

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