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OPINION	:	No. 81-201
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The Honorable William P. Baker, Assemblyman for the Tenth District, has requested an opinion on the following questions:

1 May the Savings and Loan Commissioner lawfully approve of the use by a state chartered savings and loan association of a composite name which indicates such association's connection with another business entity?

2. If such approval of a composite name is lawful, is the authority for such approval limited to situations where there has been a merger with the retention of an existing name?

CONCLUSIONS

1. The Savings and Loan Commissioner may lawfully approve of the use by a state-chartered savings and loan association of a composite name which indicates such association's connection with another business entity if such name does not include words

that are specifically prohibited by the Savings and Loan Association Law, if such name does include those words that are specifically required by that law and which properly identify the subject association as a savings and loan association, and if the Savings and Loan Commissioner does not find that such composite name is misleadingly similar to the name of any other association, or that such name is misleading in other respects to the detriment of the public.

2. The authority for such approval of a composite name is not limited to situations where there has been a merger with the retention of an existing name.

ANALYSIS

The operations of state-chartered savings and loan associations are governed by the provisions of the Savings and Loan Association Law, an extensive statutory scheme which comprises division 2 (§§ 5000–11709) of the Financial Code.[1] As chief officer of the Department of Savings and Loan, the Savings and Loan Commissioner (§ 5200) is charged with the responsibility of administering and enforcing that statute.[2] (§ 5250; *Beverly Hills Fed. S. & L. Assn. v. Superior Court* (1968) 259 Cal. App. 2d 306, 321; *Evans v. Superior Court* (1939)14 Cal. 2d 563, 569, 572–573; 51 Ops. Cal. Atty. Gen. 248, 249 (1968).)

The present question concerns the limitations imposed by the statute upon savings and loan associations in the selection of their corporate names. In this regard, sections 5510 and 5511 direct the commissioner to hold a hearing upon receipt of an application for a certificate to form a savings and loan association.[3] Among the issues that may be considered at this hearing is whether "the name of the proposed association is the same as one already adopted or appropriated by any association then existing in this State, or so similar thereto as to be likely to mislead the public." (§ 5511.) Concerning that issue section 5512 provides that.

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[1] Hereafter all section references are to the Financial Code unless otherwise specified.

[2] We are not concerned here with federally-chartered savings and loan associations which are governed by the federal Home Owner's Loan Act of 1933 (12 U.S.C. § 1461 *et seq*.), which is administered by the Federal Home Loan Bank Board. (12 U.S.C. § 1462(a), *Meyers v. Beverly Hills Federal Savings & Loan Ass'n.* (9th Cir. 1974) 499 F. 2d 1145, 1146.) This statute does not generally apply to state-chartered associations. (12 U.S.C. §§ 1462(d), 1464; *First Southern Fed. Sav. v. First Southern Sav.* (5th Cir. 1980) 614 F. 2d 71. 73; *Kinee v. Abraham Lincoln Federal Savings & Loan Assn*. (E.D.Pa. 1973) 365 F. Supp. 975, 977.)

[3] See sections 5506, 5507, and 5509 concerning the requirement that a certificate of approval be acquired from the commissioner prior to the incorporation of a proposed savings and loan association. See also 31 Ops. Cal. Atty. Gen. 97, 98 (1958).

> *"If the commissioner finds that the name of the association is the same as one already adopted or appropriated by any association then existing in this State, or so similar thereto as to be likely to mislead the public, he shall refuse to issue the certificate.* The commissioner may presume that the use of any word or words in the name of the association the same as or similar in spelling or sound to any word or words already adopted, appropriated, or used in its corporate name by any association then existing in this State, except the words: 'the' 'and,' 'mutual,' 'guaranty,' 'guarantee,' 'building,' 'loan,' 'savings,' or 'association,' constitutes such similarity of names as to be likely to mislead the public." (Emphasis added; see also *Coast & Southern Fed. S. & L. Ass'n. v. Trans-Coast S. & L. Assn.* (1971) 16 Cal. App. 3d 205, 208, which summarizes these and related provisions.)[4]

Thus, the fundamental limitation the statute places upon the selection of an association's name is embodied in the general criterion of "deceptive similarity" as determined by the commissioner.[5] (See *Coast & Southern Fed. S. & L. Ass'n. v. Trans-Coast S. & L. Ass'n ibid*.) Additionally, the statute decrees several specific name requirements and restrictions. Section 5501 declares that:

> "The name of each domestic association incorporated after August 14, 1931, shall include the words 'building and loan association,' 'building-loan association,' or 'savings and loan association.'
>
> "No association incorporated after January 1, 1954, shall include in its name the words 'building and loan association' or 'building-loan association,' except as provided in Section 9553."[6]

Thus after January 1, 1954, newly formed associations no longer had the choice between the use of the words "building and loan" and "savings and loan" in their corporate names. They were confined to the use of the words "savings and loan

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[4] The same procedures and standards that are applicable to the selection of a name for a new association are also applicable in the case of a name change of an existing association. (§ 5651; *Coast & Southern, Fed. S. & L. Assn. v. Trans-Coast S. & L. Assn. supra,* 16 Cal. App. 3d at p. 208, except for certain specified minor changes; see also § 9216(c).)

[5] Note that this is the same criterion to be applied by the Secretary of State in approving corporate names in general. (Corp. Code § 201(b) (formerly § 310); see *Coast & Southern Fed. S. & L. Assn. v. Trans-Coast S. & L. Assn., supra*, 16 Cal. App. 3d at p. 210.)

[6] Section 9553 permits an association, formed under a specified reorganization plan, to use the name, or any part thereof, of an existing association whose business is continued pursuant to that plan.

association."

Further specific name restrictions are set forth in section 5502 which provides that:

> "No domestic association incorporated after August 14, 1931, shall include the word 'mutual' in its name unless it is organized without stock, nor shall it include the word 'guaranty' or 'guarantee' in its name unless it is organized to issue stock."

Similarly, section 55 14 requires an association to eliminate the word "mutual" from its name before it shall be permitted to issue stock. (See also sections 5004 and 9522 which prohibit a corporation not licensed as a savings and loan association from using in its name the words "building and loan," "savings and loan," and other similar words.)

It is in the light of this statutory background that we now consider the particular question presented to us: whether existing statutes prescribe an association's use of a corporate name which is a combination of two other names indicating the association's connection with another business entity. An example that has been suggested is "Z Savings, a division of Y Savings and Loan Association."

At the outset we note that such a composite name is not per se inconsistent with any of the specific restrictions in the Savings and Loan Association Law relating to corporate names since combining names does not of itself necessitate the use of any of the designated words proscribed in sections 5501, 5502, and 5514, nor does it necessitate the omission of any words required in section 5501.

However, with regard to the specific example suggested ("Z Savings, a division of Y Savings and Loan Association"), although it does not contravene the name restrictions specified in the statute merely because of the fact it constitutes a composite name, it is inconsistent with such restrictions in another respect. The purpose apparent in the requirement of section 5501 that the name of an association (incorporated after 1954) shall include the words "savings and loan association" is to inform those dealing with the enterprise of its actual nature as a financial institution. (See *Greater Miami Financial Corporation v. Dickinso*n (Fla. 1968) 214 So. 2d 874, 875, where in passing upon a similar Florida statute the court stated: "The purpose of the statute is to protect the public against a false indication of the character of the business by the use of certain words in the title or name employed by the enterprise.") It would thus follow that in the case of a composite name the words "savings and loan association" should be in that segment of the name which designates the entity the public is actually dealing with, rather than in that segment of the name referring to another entity to which the first is related. The suggested name,

however, purports to indicate that the entity the public is dealing with is "Z Savings" while the balance of the name merely indicates the relationship of "Z Savings" to a dominant entity, "Y Savings and Loan Association." Thus the suggested name, because it fails to designate "Z Savings" as a "savings and loan association," does not properly identify the nature of the entity the public is dealing with and, consequently, does not satisfy the requirements of section 5501.

However, we note that the precise formulation of a composite name as represented in the suggestion example is, in specified circumstances, sanctioned under federal law with regard to federally chartered institutions. In this connection, the Federal Home Loan Bank Board (the agency administering the federal Home Owner's Loan Act of 1933, 12 U.S.C. § 1461 *et seq*.) has declared in its regulations relating to avoiding name confusion that:

> "In the case of a merger or other acquisition, the Board will generally permit the resulting association to use as a name for any branch office or mobile facility a name (without the word 'Association') that will preserve the identity of the merging association, such name to be followed by the words 'a Division of (the name of the resulting association)'." (12 C.F.R. § 556.5(d) (1980).)

The significance of this authorization afforded to federal institutions lies in the fact that section 5500.5 provides:

> "Whenever by statute or regulation there is extended to federal institutions doing business in this state whose accounts are insured by the Federal Savings and Loan Insurance Corporation or its successor any right, power, privilege, or duty not authorized herein to domestic associations, *the commissioner may by regulation* extend to domestic associations such right, power, privilege, or duty. Any such regulation shall expire on January 1 of the second succeeding year following the end of the calendar year in which such regulation was promulgated" (Emphasis added.)

Thus, if the commissioner deems it appropriate, die commissioner may promulgate a regulation pursuant to section 5500.5 authorizing for state-chartered associations the name formulation embodied in the suggested example under the circumstances sanctioned in the federal regulations. (See 64 Ops. Cal. Atty. Gen. 439 (1981, No. 81–123) where the power of the commissioner under § 5500.5 was extensively considered.)

But while it may be concluded that a combined form of corporate name is not per se prohibited by those provisions of the Savings and Loan Association Law which require or prohibit the use of specific words in a corporate name, there must still be a determination of whether such a name "is the same as one already adopted or appropriated by any [existing] association . . . , or so similar thereto as to be likely to mislead the public. . . ." (§ 5512.) Such a determination cannot, as in the case of the specific word restrictions, be made by measuring the words of the proposed name against the specific words enumerated in the statute. Such a determination must be made on a case-by-case basis by comparing each proposed name to those of other associations and judging whether there is a misleading similarity between them. This is a determination that has been committed to the discretion of the Savings and Loan Commissioner. (§ 5512; *Coast & Southern Fed. S. & L. Assn. v. Trans-Coast S. & L. Assn.*, *supra*, 16 Cal. App. 3d at p. 2 11.) It thus cannot be concluded here that a composite corporate name is, in the abstract, prohibited by the statutory restrictions against misleading similar names. As already noted in the case of federally-chartered associations, the Federal Home Loan Bank Board has allowed the use of a prescribed form of composite name in the case of mergers or other acquisitions. (12 C.F.R. § 556.5(d) (1980).)

With respect to mergers of state-chartered associations, the California Savings and Loan Association Law provides that: "in any merger pursuant to this section, the parent association may change its name regardless of whether the name so adopted is the same or similar to that of one of the disappearing associations . . ." (§ 9216(c).)

With respect to the related situation involving the reorganization of savings and loan associations, the statute provides that: "Any new association formed, pursuant to a [reorganization] plan, which continues the savings and loan business of an existing association, may adopt and use the name of such existing association or any part of such name." (§ 9553.)

It can be seen that by allowing a parent association in the case of a merger to use the same or a name similar to that of a disappearing association, or by allowing a new association, in the case of a reorganization, to use the same name or any part of such name of a continuing association, sections 9216(c) and 9553 constitute a limited exception to section 5512, the section setting forth the general rule prohibiting an association from using a name which is the same or misleadingly similar to that of another association. However, it has been suggested that these sections also constitute a specification of the exclusive instances (namely merger or reorganization) in which a composite name may be used. The difficulty with this suggestion is the fact that sections 9216(c) and 9553 in no manner mention composite names and by their terms purport to deal solely with the question of name similarity. Thus if a merged or reorganized association selected a composite name which bore no resemblance to the name of any other association, there is nothing in the

provisions of these sections which would render them applicable. Conversely, even if a single name is selected, these sections would be applicable if the name is similar to or the same as that of another association. Sections 9216(c) and 9553 are thus addressed to issues relating to name similarity and are indifferent to the issue of compositeness per se. Accordingly, it is our view that these two sections afford no basis for concluding that a composite name may only be used in the case of a merger or reorganization.

We would finally note that under the Savings and Loan Association Law, in addition to the express statutory authority to disapprove of corporate names that are determined to be misleading for the specific reason that they are unduly similar to the names of other associations, the Savings and Loan Commissioner also has an implied authority to preclude the use of names which he determines to be detrimentally misleading to the public in any other respect. (See *Evans v. Superior Court*, *supra*, 14 Cal. 2d at p. 573, where it was found that the statute affords the Savings and Loan Commissioner implied as well as express powers. To this same effect, see 44 Ops. Cal. Atty. Gen. 153, 154 (1964). And see *Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal. 2d 796, 810. "It is well settled in this state that governmental officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may fairly he implied from the statute granting the powers." (Court's emphasis).) The basic source of the Commissioner's powers are delineated in expansive terms by section 5250 which provides that;

> "The commissioner is charged with the administration and enforcement of this division [division 2], and of all other laws relating to or affecting the incorporation, organization, business, operation, merger, consolidation, dissolution, or liquidation of associations subject to the provisions of this division. The commissioner has and may exercise *all of the powers necessary or convenient for such purposes.*" (Emphasis added.)

Thus the Commissioner is granted the authority to exercise all of the powers "necessary or convenient" for the enforcement of division 2 (the Savings and Loan Association Law) which, as noted above, constitutes a detailed and comprehensive scheme governing the conduct of savings and loan businesses for the protection of the public. (See 51 Ops. Cal. Atty. Gen. 248, *supra*, at p. 249.)

With reference to the powers of the Commissioner under this statute, the Supreme Court in *Wilson v. Superior Court* (1935) 2 Cal. 2d 632, 637, stated; "The successful achievement of the object of the statute requires broad rather than limited powers, and justifies a liberal rather than a strict construction." (Accord, *Evans v. Superior Court*, *supra*, 14 Cal. 2d at p. 572; 51 Ops. Cal. Atty. Gen. 248, *supra*, at p. 249: "The importance of the commissioner's function requires that a liberal, rather than a strict,

construction should be placed on the Savings and Loan Association Law in determining the powers of the commissioner.")

More specifically directed to the power to disapprove a misleading name is the Commissioner's authority to determine, prior to his approval of the incorporation of savings and loan association, ". . . whether the public convenience and advantage will be promoted by the formation of such association" (§ 5509), and to refuse to approve of such incorporation if he finds "[t]hat the public convenience and advantage will not be promoted by the formation of such association." (§ 55 13(e)).

Furthermore, if the Commissioner finds:

> " . . . that the association is violating the provisions of its articles of incorporation, charter, bylaws, or any law of this State, or is conducting its business in an unsafe or injurious manner, he may by an order addressed to such association direct a discontinuance of such violations or unsafe or injurious practices and a conformity with all the requirements of law." (§ 9000.)

Taken together, these provisions expressly authorize the Commissioner to disapprove of the incorporation of an association when he finds such incorporation to be contrary to the public interest and to order an association to discontinue business practices which he finds to be unlawful, unsafe or injurious. (See *Evans v. Superior Court*, *supra*, 14 Cal. 2d at p. 572, observing that various sections of the statute relating to the Commissioner's power "should be considered together . . . .") Assessing this specific authority to prevent harmful business practices in conjunction with the broad grant of authority to exercise "all of the powers necessary or convenient" for the purpose of administering and enforcing the statute (§ 5250), it "may fairly be implied" that the Commissioner has the power to refuse to approve of the use of a corporate name that would mislead the public to its disadvantage or injury for reasons in addition to the fact that such name is similar to the name of another association.

Thus if a proposed composite name indicated that a savings and loan association was related to another business entity when in fact it was not, or was related in a manner which was inconsistent with the true nature of the relationship, then the commissioner could appropriately conclude that operating with such a deceptive name would be conducting business in a manner contrary to the public's advantage or safety, and accordingly could refuse to issue the required certificate of approval.

Evaluating in the context of such authority the hypothetical name presented to us ("Z Savings, a division of Y Savings and Loan Association"), we note at the outset

that the word "division" has no fixed legal definition but is commonly understood in the corporate environment to mean a unit *within* a corporation as opposed to a discrete corporate entity which is controlled or owned by another corporation.[7] In Filkins and Caruth, Lexicon of American Business Terms (Simon and Schuster 1973) p. 38, the term "division" is defined as 'an organizational term referring to a major functional area or activity within an enterprise; for example, the marketing division, the production division, the finance division." Similarly when the cases employ the word "division" in a commercial context, it is commonly used in the sense of a functional unity within a corporation. (See, e.g., *Automatic Canteen Co. v. Department of Agriculture* (1966) 247 Cal. App. 2d 18, 21: "Canteen and Nationwide are no longer separate entitles, but each is presently operated as a functional and autonomous division of Automatic Canteen.")

The distinction between a division within a corporation and a subsidiary corporation under the control of a parent corporation is afforded particular significance in the present situation by the rule of law that "[a] parent corporation is not liable on the contract or for the tortious acts of its subsidiary simply because it is a wholly owned subsidiary. Some other basis of liability must be established." (*Northern Natural Gas Co. v. Superior Court* (1976) 64 Cal. App. 3d 983, 991; accord, *Walker v. Signal Companies, Inc.* (1978) 84 Cal. App. 3d 982, 1001.) Thus within the factual framework of a particular case the Commissioner might determine that a proposed association's use of the term "division" in its corporate name, which combines the names of two business entities, is unacceptably misleading because it implies the relationship of a unit within a dominant corporation, thus leading the public to believe that it could rely on the financial strength of the dominant corporation; whereas the fact might be that the so-called "division" is in actuality an independent subsidiary which does not afford the public an automatic basis for reliance upon the parent corporation.

However, in making determinations concerning the propriety of corporate names, the Commissioner is afforded broad discretion.

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[7] Corporations which are owned or controlled by other corporations are specifically denominated in the law as "subsidiaries" (Corp. Code § 189; *Northern, Natural Gas Co. v. Superior Court* (1976) 64 Cal. App. 3d 983, 988, in. 2; see also §§ 11502, 11702) and thus distinguishable from operating units within a corporation. See *Handlery v. Franchise Tax Board* (1972) 26 Cal. App. 3d 970, 985; *Lugosi v. Universal Pictures* (1979) 25 Cal. 3d 813, 829, fn. 2 (dis. opn.), where an awareness of this distinction is apparent.

A corporation exercising control over a Savings and Loan Association is denominated in the Savings and Loan Association Law as a "savings and loan holding company." (§ 11500.) See 62 Ops. Cal. Atty. Gen. 619 (1979) and Atty. Gen. Unpub. Op. IL 67–20 (1967) discussing various aspects of the provisions of that law which are applicable to such holding companies. (511500 *et seq*.)

> "[A]s part of his duties to police the savings and loan industry, the commissioner was given the power to make an initial determination whether a new name would mislead the public. If he did so determine, that was to be the end of it, subject of course to a review for abuse of discretion under section 1094.5 of the Code of Civil Procedure." (*Coast & Southern Fed. S. & L. Assn. v. Trans-Coast S. & L. Assn., supra*, 16 Cal. App. 3d at p. 211.)

In commenting upon the discretion vested in the Secretary of State to determine if the names of corporations (other than savings and loan associations) are deceptive, a discretion which is virtually the same as that exercised by the Savings and Loan Commissioner with respect to the names of savings and loan associations (see *Coast & Southern Fed. S. & L. Ass'n v. Trans-Coast S. & L. Ass'n, supra*, 16 Cal. App. 3d at p. 210, and compare f 5512 with Corp. Code § 201 (b)), the Supreme Court stated:

> "It is his opinion that the name is one which would tend to mislead the public. The section vests in him a certain discretionary power which he may be compelled to exercise, but which, in the absence of an abuse of discretion, we should not compel him to exercise in any particular manner. In other words, where it appears that there is a reasonable basis for the action of a public officer possessing discretionary power we cannot substitute our judgment for his." (*Cranford v. Jordan* (1936) 7 Cal. 2d 465, 467.)

But even given the Savings and Loan Commissioner's broad discretion to determine the propriety of a proposed corporate name, it is our view that the mere fact that such a name is a composite name does not of itself constitute a basis for disapproval. We thus conclude that whether a proposed new name results from a merger, the original formation of an association, or the mere change of an existing association's name, such corporate name may be a combination of two or more names and may be used as the corporate name of a savings and loan association if that name does not contain the words prohibited by sections 5501, 5502, and 5514, and does contain the words required by section 5501, and such words refer to the proper entity, and if the commissioner does not find that such name is misleadingly similar to the name of any other existing association, or if he does not find that the name is otherwise misleading in a manner detrimental or injurious to the public.

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