

to Joseph Robert Hamilton. The Immigration and Naturalization Service of the United States Department of Justice has advised your department by letter that the request was granted. A copy of this letter was forwarded by you to this office. The question presented is whether such a letter is sufficient to permit your department to change the marriage record to show the new name and the date and manner the change was obtained under the provisions of Chapter 283, P. L. 1945 (R. S. 2:67-8).

The answer to such question is in the negative.

Section 1, Chapter 283, P. L. 1945 (R. S. 2:67-8) provides as follows:

"Upon the receipt of a certified copy of an order permitting a change of name, and a request for correction of an existing record of the birth or marriage of the individual, the State Registrar of Vital Statistics or local registrar of vital statistics shall adjust the record or records to show the new name and the date and manner by which obtained."

The above-quoted provision requires a certified copy of an order permitting a change of name and a request for correction be received before you have the authority to adjust the record. The letter, which was forwarded to you by the Immigration and Naturalization Service of the United States Department of Justice, is not a certified copy of an order as required by the statute and not a sufficient compliance therewith.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: JOSEPH A. MURPHY,
Assistant Deputy Attorney General.

JAM:MB

APRIL 21, 1949.

HON. CHARLES R. ERDMAN, JR., *Commissioner,*
Department of Conservation and Economic Development,
520 East State Street,
Trenton, New Jersey.

Re: FORMAL OPINION—1949. No. 38.

DEAR COMMISSIONER ERDMAN:

I have before me a request made through you by the Division of Veterans' Services for an opinion concerning veterans' loans made by the First National Iron Bank of Morristown to Sidney T. Pearson, your Application No. 5165 and Gordon S. Jolliffe, your Application No. 5166.

In the Jolliffe matter, a loan was made to the veteran by the bank under date of April 15, 1946, in the sum of \$2,000, said loan having been effected pursuant to an application of the veteran, dated March 21, 1946, for a veteran's loan in that amount for the purpose of purchasing a stationery store in partnership with the other veteran,

Sidney T. Pearson, who also received a loan in the same amount on the same date, pursuant to an application also dated March 21, 1946, for the above purposes. Both of these loans were approved under date of April 17, 1946, by the Veterans' Loan Authority, on condition that the bank obtain from these veterans a chattel mortgage covering all fixtures and equipment purchased with the proceeds of the loan. Pursuant thereto a chattel mortgage was executed by both of the above-named veterans, individually and as partners, and by Kathleen Pearson Jolliffe, the wife of the veteran, Jolliffe, the other veteran being single. The bank was the mortgagee named in the chattel mortgage and it covered certain property to be used in the partnership business. This mortgage is dated April 29, 1946, and was not recorded until one week thereafter. In each case the loan was evidenced by a note on the approved Veterans Loan Authority form signed by the veterans and in the case of Jolliffe by his wife, Kathleen Pearson Jolliffe, as endorser. Both of these loans were made pursuant to Chapter 126, P. L. 1944, as amended and supplemented.

In September, 1948, both veterans filed petitions in bankruptcy and the bank pursuant to instructions of the Veterans Loan Authority filed a petition in the cause, requesting permission to take possession of the chattels covered by the mortgage and proceed with foreclosure. The trustee in bankruptcy contested the validity of the chattel mortgage on the ground that same was not recorded within time. A hearing was held and thereafter the bank decided to compromise its claim on the chattel mortgage and accepted \$600.00 in settlement. The claim was compromised by the bank in that there was a serious question as to its validity by reason of the bank's failure to record the chattel mortgage within time. The chattels covered by the mortgage were sold at public auction in the bankruptcy proceedings for \$1,000.00.

The bank has now requested payment of its guaranty from the Veterans Loan Authority and has submitted the notes in question for purchase. There has been credited against the notes monies received by the bank on its compromise. The Authority has directed the bank to deduct from the amount requested in each case an additional amount representing the difference between the amount which would have been recovered by the bank had the chattel mortgage been a valid and effective first lien and monies actually received on its claim from the bankruptcy proceedings. This represents approximately \$500.00 in each case. The bank is willing to reduce its demand accordingly but has raised the question as to whether it should receive from the Veterans Loan Authority an agreement which would enable it to proceed against the wife of the veteran, Jolliffe, for that part of the loan which the Authority decided was not covered by the guaranty. In the event the veterans do not receive a discharge in bankruptcy, the agreement requested would also include the right to proceed against them for that part of the loan.

There are two questions involved :

Firstly: In payment of a guaranty or insurance on a veteran's loan is it proper for the Veterans Loan Authority to deduct the value of any chattels or property which should have been covered by a mortgage if the bank did not obtain a mortgage or did not obtain a valid and effective lien on the property purchased with the proceeds of the loan, in violation of the Veterans Loan Act and the regulations issued thereunder?

We are of the opinion that guaranty or insurance of the veteran's loan does not attach to that part of the loan which should have been secured by a mortgage on chattels or property if such a mortgage has not been obtained or the mortgage obtained was not a valid and effective lien.

The second question is whether the bank on purchase of the notes by the Veterans Loan Authority is entitled to any recourse against the Authority or the debtors for that part of the loan to which the guaranty or insurance did not attach, because of failure to obtain a valid and effective mortgage as set forth above?

As to the second question we are of the opinion that the bank is not entitled to any recourse against the Veterans Loan Authority or the debtors for that part of the loan which was not covered by the guaranty or insurance, because of its failure to obtain a valid and effective mortgage.

The answers to these questions are contained in the Veterans Loan Act, Chapter 126, P. L. 1944 (R. S. 38:23B-1 et seq.) as amended and supplemented; and the Regulations of the Authority.

The parts of the statute applicable to these questions are as follows:

Section 3, Chapter 126, P. L. 1944:

"The authority shall have power to contract, to sue and be sued, to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act; but the authority may not in any manner, directly or indirectly, pledge the credit of the State."

Section 11, Chapter 126, P. L. 1944:

"Any bank making a veterans' loan shall co-operate with the commissioner in supervising the use of the credit in accordance with its purposes."

Section 12, Chapter 126, P. L. 1944 as Amended by L. 1945, C. 185, Section 5, L. 1946, C. 121, Section 9, and L. 1947, C. 190, Section 1:

"Each business loan made under this act shall:

a. Be evidenced by a note or other obligation approved by the commissioner.

b. Bear interest at a rate not exceeding four per centum (4%) per annum upon the unpaid balance.

c. Be payable as follows:

(1) In monthly or quarterly installments of interest, the first of which shall be payable not less than six months after the making of the loan and the last of which shall be payable not exceeding six years from the date of the obligation; and

(2) In monthly or quarterly installments of principal, the first of which shall be payable not less than twelve months after the making of the loan and the last of which shall be payable not exceeding six years from the date of the obligation; except, however, that any veteran at his option, may, on such form as the commissioner shall prescribe, waive the grace period, or any part thereof, herein provided him for the payment of the first installment of interest, or the grace period, or any part thereof, herein provided him for the payment of the first installment of principal, or both.

d. Be secured only by the personal liability of the maker, and not by any endorsers, co-makers, collateral or other security; except that in accordance with such rules and regulations as prescribed by the commissioner, where the maker is married endorsement of the spouse may be required, and *where the loan, or any part thereof, is made to finance the purchase or improvement of any property a lien on such property may be required.*

Where the loan, or any part thereof, is made to finance the purchase or improvement of any property to be used by the veteran and any other person or persons in a business or profession to be conducted by them as partners, and a lien on such property is required pursuant to the rules and regulations of the commissioner, the instrument creating such lien may, pursuant to regulations prescribed by the commissioner, be required to be made and executed by such partners, individually and as co-partners doing business under their trade name. Notwithstanding the provisions of any other law to the contrary every such lien instrument, properly recorded, shall be valid and effective against all creditors of such partnership."

Section 9, Chapter 185, P. L. 1945 provides for the purchase of loans which are insured and as to same states:

"Whenever any approved veteran's note shall be in default to any such bank for thirty days after the date of maturity thereof, or whenever any installment thereon is more than three months in arrears, the authority shall, upon the demand of such bank, purchase from said bank such note by paying to said bank out of the reserve fund set aside to the credit of said bank, as herein provided, the total amount of principal and interest then due and owing to said bank on said note, but in no event shall any payment be made by the authority in excess of the amount then remaining to the credit of said bank in the reserve fund set aside for said bank, as herein provided."

Section 10, Chapter 185, P. L. 1945 provides for the purchase of loans which are guaranteed and as to same states:

"In the event that a bank shall elect, pursuant to the provisions of section eight hereof, to have its veterans' loans guaranteed by the authority, then the authority shall purchase upon demand of such bank, to the extent of the resources of the veterans guaranty and insurance fund in excess of the total of all balances then held in reserve funds in accordance with the provisions of section nine hereof, any approved veteran's note which remains unpaid for thirty days after the date of maturity thereof, or on which any installment is more than three months in arrears, at a price equal to ninety per centum (90%) of the unpaid principal of such note."

Pursuant to the above statutes, certain regulations have been made by the authority which are applicable and are as follows:

Section 1.015:

"Mortgages—Generally. When a business loan, or any part thereof, is made to finance the purchase of any specific property to be used in the business or profession, a mortgage on such property securing the amount of the loan, is required. In all such cases the appropriate Veterans Loan Authority form of chattel or real property mortgage shall be used. In any case where the veteran requires moneys in excess of a \$3,000.00 veteran's loan in order to purchase specific personal property to be used in his venture, and the bank is willing to lend such excess without any guaranty or insurance thereon by the Veterans Loan Authority, then, if specific property is to be purchased with the proceeds of both loans, chattel mortgage form DED-VLA-10A

shall be used. This form provides that out of the proceeds of any sale of such property the non-guaranteed or uninsured loan shall first be satisfied before any application of said proceeds to the guaranteed or insured loan.

Whenever any mortgage is required to be made pursuant to the provisions of this section, *the bank making the loan shall cause such mortgage to be duly recorded in the proper county office.*"

Section 1.018:

"Lien of Mortgage. Every mortgage required to be made under these regulations shall be such as shall create a valid first lien on the property covered by such mortgage, unless the Veterans Loan Authority shall, in writing, permit otherwise."

Italics ours.

The statute clearly states that where a loan or any part thereof is used to purchase property a lien on such property may be required. The regulations referred to herein require that such a mortgage be obtained and that such mortgage be a valid first lien on the property covered by such mortgage unless the Veterans Loan Authority shall, in writing, permit otherwise. No such permission was granted in this transaction and the facts clearly show that the bank was requested to obtain a chattel mortgage. It is, therefore, clear that the guaranty or insurance of loans should not apply to that part thereof which should have been protected by a mortgage and if a loss is incurred by reason of failure to obtain such a mortgage it should be borne by the bank. It is arguable that the bank's failure to abide by the rules and regulations of the Authority and the statute could result in the guaranty or insurance being entirely ineffective. However such a finding would be contrary to the spirit and intent of the act which was to provide a liberal source of credit to World War II veterans to enable their going into business.

It is also clear from the sections of the statutes above referred to that the payment of the guaranty or insurance is effected by the purchase of the note evidencing the veteran's loan. The amount paid where the loan is guaranteed is ninety per centum (90%) of the unpaid balance. The amount paid in cases of insured loans is the amount available in the reserve fund which may be the entire amount due or substantially less.

The clear intent of the statute is that the note will be purchased without any further recourse by the bank against the makers or endorsers. It is therefore, clear that the statute did not intend that the bank have any recourse against the borrower or endorser for any part of the loan for which it has not been paid by way of guaranty or insurance.

The bank has the option either to request the Veterans Loan Authority to purchase the note pursuant to the statute or waive its insurance or guaranty and proceed for collection on its own.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: CHESTER K. LIGHAM,
Deputy Attorney General.