

5128 Lubiano

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

May 24, 1993

The Honorable Grady L. Patterson, Jr.
Chairman, State Board of Financial Institutions
Post Office Box 11778
Columbia, South Carolina 29211-1778

Dear Mr. Patterson:

You have inquired as to whether state-chartered banks under the provisions of Title 34, Chapter 33, Section 34-33-10 et seq., S. C. Code Ann., may invest in a Georgia chartered Bankers Bank.¹

Establishment of a banker's bank in this state is permitted by §§34-33-10 et seq. A "banker's bank" is defined by §34-33-10 to be:

a bank insured by the Federal Deposit Insurance Corporation or the holding company which owns or controls such an insured bank where the stock of the bank or holding company is owned exclusively by other banks and the bank or holding company and all its subsidiaries are engaged exclusively in providing services for other depository institutions, their officers, directors, and employees.

Section 34-33-10 contains no geographic restrictions, as do other statutes relating to the regulation of banking. (See, for examples, statutes in Chapter 24 of Title 34 relative to

¹This opinion is limited to consideration of state law and state-chartered banks. National banks would be regulated in this regard by the National Bank Act, generally 12 U.S.C. §21et seq., and specifically 12 U.S.C. §24 as to investment in capital stock of banker's banks by national banks.

Revised - 1993

The Honorable Grady L. Patterson, Jr.
Page 2
May 24, 1993

bank holding companies which distinguish between in-state and southern regional banks and bank holding companies.)

The term "bank" is not defined within Chapter 33 of Title 34; thus it is appropriate to utilize the definition of "bank" in §34-1-10:

Except when otherwise specifically provided "bank" as used in this title must be construed to include all institutions doing any kind of banking business whose deposits are eligible for insurance by the Federal Deposit Insurance Corporation, excluding a savings bank,

Limitations on investments by banks in banker's banks are specified in §34-33-60, as follows:

Notwithstanding any other provision of law, up to fifteen percent of the capital accounts of a bank may be invested in the capital stock of a banker's bank, except that no purchase of stock may result in acquisition of more than five percent of any class of voting securities of the banker's bank.

As with §34-33-10, this Code section contains no geographic restrictions.

The primary objective of both the courts and this Office in interpreting a statute is to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Where the terms of a statute are clear and unambiguous, such terms must be applied literally. Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976). In the absence of ambiguity, words must not be added to or taken from a statute. Federal Ins. Co. v. Speight, 220 F.Supp. 90 (D.S.C. 1963). A particular statute must be construed with all other provisions of that title of the Code, giving effect to each so as to make a harmonious whole. State of S.C. ex rel. Maybank v. S.C.E. & G. Co., 41 F. Supp. 111 (D.S.C. 1941). A statute must be construed in light of conditions existing at the time it is enacted. State v. Kizer, 164 S.C. 383, 162 S.E. 44 (1932).

As discussed earlier, no geographic restrictions appear in these statutes; such limitations would have to be inferred, which is not appropriate when, as here, the statutes are not ambiguous. The legislature in 1984 and 1985 adopted statutes regulating certain aspects of banking which contained regional limitations (See §34-24-10 et seq.), which reflected the newly-emerging trends in regional banking. The statutes relative to banker's

The Honorable Grady L. Patterson, Jr.
Page 3
May 24, 1993

banks were adopted as Act No. 46, 1985 Acts and Joint Resolutions. Certainly the legislature could have placed geographic restrictions in §34-33-60 in 1985, as it did in other banking statutes, but that body obviously chose not to do so in regulating investments in banker's banks.

Applying the foregoing rules of statutory construction and observing that the terms of §§34-33-10, 34-33-60, and 34-1-10 do not appear to be ambiguous, the following conclusions may be reached: An institution doing any kind of banking business, whose deposits are eligible for insurance by the Federal Deposit Insurance Corporation (excluding a savings bank), may invest up to fifteen percent of its capital accounts in the capital stock of a banker's bank, as defined in §34-33-10 and chartered in this state or another state, as long as such investment does not result in a bank's acquisition of more than five percent of any class of voting securities of the banker's bank.

Conclusion

It is the opinion of this Office that state-chartered banks may invest up to fifteen percent of their capital accounts in capital stock of a banker's bank chartered in this state or another state, subject to the percentage limitations specified in §34-33-60.

With kindest regards, I am

Sincerely yours,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:kws

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions