

1979 WL 43176 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 15, 1979

*1 Honorable Grady L. Patterson
Chairman
State Board of Financial Institutions
Post Office Box 11194
Columbia, South Carolina 29211

Honorable John T. Campbell
Secretary of State
Post Office Box 11350
Columbia, South Carolina 29211

Gentlemen:

I enclose herewith opinion issued by Assistant Attorney General Richard B. Kale, relating to certain questions pertaining to business activities of trust departments of a national bank located in a foreign state. Mr. Kale has responsively handled the opinion, but he has also correctly pointed out that answers to the questions relate primarily to a hypothetical factual situation. We recommend for the future that the Board of Financial Institutions and the Secretary of State take positions that the State laws apply, unless the foreign banking institution or trust department can, itself, present reasons why our law should not apply to the particular factual situation in question. In other words, the facts of a particular case must govern whether the banking laws apply, whether the foreign corporation qualification laws are applicable, or whether neither statutory scheme is applicable. We would not want the enclosed generalized opinion to be utilized by foreign trust departments to insulate them from our foreign corporation laws, or from our banking laws. The burden should be on the national bank and its trust department to present a clear factual situation and reasons why our banking or corporation laws do not apply to the foreign trust department when engaged in a particular business activity in the State of Carolina. We would then be in a position to advise you based on the facts of that case alone, rather than on a general hypothetical basis.

Yours very truly,

Victor S. Evans
Deputy Attorney General

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