

1983 S.C. Op. Atty. Gen. 35 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-20, 1983 WL 142691

Office of the Attorney General

State of South Carolina

Opinion No. 83-20

June 10, 1983

**\*1 SUBJECT: Banks and Banking; Securities**

South Carolina banking institutions may invest their own assets in Trust for U. S. Treasury Obligations.

To: Grady L. Patterson, Jr.  
Chairman  
Board of Financial Institutions

QUESTION:

Whether a banking institution chartered under the laws of the State of South Carolina may invest certain of its assets in Trust for U. S. Treasury Obligations?

OPINION:

Yes. The investment by banks of its own assets in securities is governed by R15-1 of the Regulations of the State Board of Financial Institutions, which provides:

(1) Except as hereinafter provided or otherwise permitted by law no bank or banking institution shall purchase for its own account any shares of stock in any corporation except as provided in subsection (7) hereof.

(2) The purchase of securities which are in default, either as to principal or interest, is prohibited.

(3) Purchase of an 'investment security' at a price exceeding par is prohibited, unless the bank shall:

(a) Provide for regular amortization of the premium paid, so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or

(b) Set up a reserve account in order to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under (a) above, or

(c) Charge such premium to undivided profits account or reserve account of said bank at the time of purchase.

(4) Purchase of securities convertible into stock at the option of the issuer is prohibited.

(5) Any purchase of securities under repurchase agreement is deemed to be a 'loan' and is to be treated and classified and is hereby made subject to all laws, rules and regulations governing loans and specifically as to §§ 34-13-50 to 34-13-70, S. C. Code, 1976.

(6) Any sale of securities under repurchase agreement is deemed to be 'money borrowed' and is to be so treated and classified.

(7) Subject to the approval of the Board of [Financial Institutions], banks may own stocks in subsidiary corporations primarily engaged in a banking activity or in any activity which, in the opinion of the Board, is so closely related to banking as to be a proper incident thereto. . . .

The Trust for U. S. Treasury Obligations classifies itself as a no-load, open-end, diversified investment company. It was established as a Massachusetts business trust under the provisions of Chapter 182, annotated laws of Massachusetts, by a Declaration of Trust, dated July 24, 1979. The Trust pursues an objective of attaining ‘stability of principal and current income consistent with liquidity and preservation of principal.’ See, Prospectus, Trust for U. S. Treasury Obligations, dated January 31, 1983.

\*2 Since the Trust for U. S. Treasury Obligations is a Massachusetts Business Trust<sup>1</sup> and not a corporation, investments by banks would be permissible so long as the purchase complies with requirements of subsections (2), (3) and (4). effect, there are important and fundamental differences, which have resulted generally in holdings that such trusts are not corporations. Id. at § 9.

Richard B. Kale, Jr.  
Senior Assistant Attorney General

#### Footnotes

<sup>1</sup> A business trust, or ‘Massachusetts Trust’ is defined as ‘an unincorporated business organization created by instrument by which property is to be held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing the beneficial interests in the trust estate.’ 13 Am.Jur.2d, Business Trusts, § 1 (1964). Although a business trust has some of the attributes of a corporation and is similar in practical

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