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Office of the Attorney General

State of South Carolina

January 7, 1977

\*1 Aiken-Speir, Inc., a wholly-owned mortgage company subsidiary of Bankers Trust, must comply with the banking laws and regulations of the State of South Carolina regarding the making of first and second mortgages.

Robert C. Cleveland  
Commissioner of Banking

QUESTION PRESENTED:

Does Aiken-Speir, Inc., a mortgage company wholly-owned by Bankers Trust, a state chartered bank, have to comply with banking laws and regulations regarding the making of first and second mortgages?

CITATION OF AUTHORITIES:

S. C. Atty. Gen. Opinion No. 2831, dated February 11, 1970;

Section 8-51, South Carolina Code of Laws (1962);

Section 8-131, South Carolina Code of Laws (1962);

Article IX, Section 9, S. C. Constitution;

[Floyd v. Thornton](#), 220 S. C. 414, 68 S. E. 2d 334 (1951);

DISCUSSION:

Aiken-Speir, Inc., is a mortgage loan company, which is a wholly-owned subsidiary of Bankers Trust of South Carolina. While Aiken-Speir does have its own corporate structure, the members of its Board of Directors are also Directors of Bankers Trust of South Carolina. Furthermore, the senior policy-making officers of Aiken-Speir are likewise officers of Bankers Trust of South Carolina. Bankers Trust of South Carolina itself does not participate, except on a very restricted basis, in the long term mortgage lending business, but rather this business is almost exclusively carried on by its subsidiary, Aiken-Speir, Inc. It would appear, furthermore, that all construction loans and permanent mortgage loans made for sale to investors by Aiken-Speir, Inc., are pre-approved by the officials of Bankers Trust of South Carolina.

No specific statute or regulation deals with the question raised herein. Article IX, Section 9 of the South Carolina Constitution, however, provides:

The General Assembly shall have no power to grant any special charter for banking purposes, but corporations or associations may be formed for such purposes, under general laws, with such privileges, powers and limitations, not inconsistent with the Constitution, as it may deem proper. The General Assembly shall provide by law for the thorough examination and inspection of all banking and fiscal corporations of this State.

Moreover, the power of the State to regulate the whole business of banking has been expressly recognized by the courts. See, Floyd v. Thornton, 220 S. C. 414, 68 S. E. 2d 334 (1951).

The general powers of banks are proscribed in Section 8-131 of the Code. In this regard, subsection 4 provides that a banking corporation may 'lend money on such terms as may be agreed on, subject to the usury laws of the state . . .' Pursuant to its Constitutional powers, the State has enacted certain laws and regulations restricting and regulating this power of banks to lend money. The question presented here is whether Aiken-Speir, Inc., is governed by those banking laws and regulations regarding the making of first and second mortgages?

\*2 The question is not unlike the question previously raised with 'loan production offices,' in which this Office opined that such offices which perform servicing activities of soliciting borrowers, negotiating terms, and processing applications for loans were engaged in branch banking and thus subject to state banking regulations. Attorney General's Opinion No. 2831 of 1971. It is readily apparent that Aiken-Speir, Inc. is the mortgage loan 'department' of Bankers Trust and that the two institutions carry on a unitary type of operation. Common directors, common bank officers, common control through stock ownership, all lead to the conclusion that Bankers Trust is, in substance, doing a mortgage loan business through its subsidiary, Aiken-Speir, Inc., as if the institutions were one. As such, this 'office' or 'branch' would be subject to state banking regulations to insure the furtherance of public policy regardless of its corporate structure.

#### CONCLUSION:

Aiken-Speir, Inc., must comply with the banking laws and regulations of the State of South Carolina regarding the making of first and second mortgages.

You have asked whether eyeglasses sold by prescription are exempt from the sales and use tax.

Section 65-1404.2 provides that:

Any person fifty years of age or over and any person who is totally and permanently disabled as defined by Section 65-1522.1 shall not be required to pay sales tax on medicine and *prosthetic devices sold by prescription*. *Section 65-1404.2* (Emphasis added)

Effective July 1, 1977, the above is repealed and the language of the exemption is that:

There are exempted \* \* \*

Gross proceeds from the sale of medicine and prosthetic devices sold by prescription. *Section 22, Part II of Act 709, Acts of 1976*.

Section 65-1402.2 was enacted in 1974, Act 1135, Section 5, Part II, and further provides that:

The Tax Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Section. \* \* \*.

The Tax Commission, pursuant to that directive, adopted a rule that provided in part that:

Prosthetic devices are defined as artificial devices to replace a missing part of the body. Eye glasses, hearing aids and orthopedic appliances, such as braces, wheel chairs, and orthopedic custom-made shoes do not come within the exemption, and the exemption section makes no provision for exemption from the tax for charges for the repair of prosthetic devices.

Medicines and prosthetic devices to be exempted from the tax must be sold on prescription, in writing, by a medical doctor, a dentist, and osteopath, or a chiroprapist.

The rule has been in effect since January 1, 1975. The General Assembly has met on two occasions and enlarged the exemption, however, failed to modify or alter the term 'prosthetic devices' as defined by the Commission's rule. The Tax Commission's administrative interpretation is therefore entitled to weight and is not to be overruled without cogent reason. *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 S. C. 354, 60 S. E. 2d 682.

\*3 The Commission's interpretation is fortified by other well settled rules of construction.

Tax deductions are a matter of legislative grace and the taxpayer must establish compliance with the statutory conditions imposed. *AVCO Corporation v. Wasson*, (Smith's 12/4/76); *Southern Soya Corporation of Cameron v. Wasson*, 252 S. C. 484, 167 S. E. 2d 311 (1969); *Davis Mechanical Contractors, Inc. v. Wasson, et al.*, Smith's Report, January 8, 1977.

Likewise, doubt in an exemption statute is construed against the exemption and in favor of the tax. *Chronicle Publishers, Inc. v. South Carolina Tax Commission*, 244 S. C. 192, 136 S. E. 2d 261; *Davis Mechanical Contractors, Inc. v. Robert C. Wasson, et al.*, Smith's Reports, supra.

Prosthesis is defined as:

1. The addition to the human body of some artificial part, as a leg, eye, or tooth. *Webster's New Collegiate Dictionary*.

2. (1) The substitution of an artificial part for a missing natural part of the body.

(2) An artificial part or substitution for a missing part of the body, as a limb, denture, eye, etc. *Schmidts' Attorneys Dictionary of Medicine*.

*The Encyclopedia Britannica*, 200 Anniversary Edition, 1968, provides that: '\* \* \* by definition a prosthesis is any artificial organ or part replacing a missing natural one.' The authority further states that: 'Braces, which give support or stability to a limb or joint are not replacement parts, hence are not considered prosthesis; instead, they are known as orthotic ('straightening') devices.'

The eyeglasses therefore to be exempt must be sold by prescription and must replace a missing part of the eye. Eyeglasses that support or aid the eye would not be exempt.

The Commission's rule, however, limits the exemption to prosthetic devices sold by prescription of medical doctors, dentists, osteopaths and chiropractors. This limitation is ineffective as the General Assembly has conferred the right to provide eyeglasses upon prescription of an optometrist. *Chapter 18, Title 56, South Carolina Code of Laws*.

Richard B. Kale, Jr.  
Assistant Attorney General

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