



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 12, 1995

Mr. Louie A. Jacobs
Commissioner of Banking
State Board of Financial Institutions
1015 Sumter Street
Calhoun Building, 3rd Floor
Columbia, SC 29211

Dear Commissioner Jacobs:

Attached is a copy of the letter that I wrote to you dated June 19, 1995 which concluded that a Court would be likely to uphold the Board of Financial Institution's historic interpretation of South Carolina law as not authorizing conversions of State savings associations into State chartered banks. The letter noted the absence of any express authorization for this type of conversion. Nevertheless, other authority may permit the Board to authorize this type of conversion if it chooses to do so.

A savings association appears to have authority as a corporate entity under State law to seek approval to convert and to convert its charter if approved. As noted in that earlier letter, § 34-28-20 applies the terms of the Business Corporation Act to Savings associations when not in conflict with other State laws. Section 33-10-101 (1970) of that Act permits corporations to amend their articles of incorporation. Section 34-28-230 (1987) also permits savings associations "...to reorganize, to merge or consolidate into another association or company..." pursuant to a plan approved by the Board. The Board does not appear to be precluded from approving a savings association to bank conversion.

My understanding is that if conversion were permitted, the savings association would have to meet the same requirements of State law that it would have to meet if it were applying for a bank charter as a start-up corporation. S.C. Code Ann. § 34-1-70 (1987). No purpose is indicated expressly or otherwise by State

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law which would be served by requiring the savings association to follow a less direct route than conversion to becoming a State bank. As noted in the June letter, the General Assembly has expressly provided for conversions other than savings association to bank, but this absence of authority may indicate only an intent not to provide a particular method or additional requirements for a savings association to bank conversion. Although the June letter concluded that the Board's historic interpretation of a lack of authority to approve these conversions would be given great weight by a Court, the above authority indicates that the Board may, nevertheless, approve the proposed conversion if it is in the public interest and otherwise meets the requirements of § 34-1-70.¹

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have any questions or need additional information, please let me know. Thank you for your assistance.

Yours very truly,


J. Emory Smith, Jr.
Assistant Deputy Attorney General

JESjr
Attachments

¹ No conclusion is expressed herein regarding requirements of the Federal Deposit Insurance Corporation (FDIC) which would have to be met if conversion is to occur.