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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 19, 1995

Unpublished Opinion

Mr. Louie A. Jacobs
Commissioner of Banking
State of South Carolina Board of
Financial Institutions
1015 Sumter Street, Room 309
Columbia, South Carolina 29201

Dear Mr. Jacobs:

You have requested the opinion of this Office as to whether a State chartered savings and loan association may convert its charter to a state chartered bank. The savings association in question is not owned by a holding company.

According to your letter, the State Board of Financial Institutions (Board) has historically determined that this type of conversion is not authorized by State law; however, you note, as possible authority for such a conversion, S.C. Code Ann. §34-28-230 (1987) which, under the terms of that law, permits a savings association to reorganize, merge or consolidate into another association. In addition, in materials sent by a savings and loan association which are attached to your letter, reference is made to §34-28-20 of the Savings Association Act which provides that the provisions of the South Carolina Business Corporation Act apply to any savings association when not in direct conflict with or superseded by the savings association laws. Further reference is made then to §33-10-101 (1970) of the Business Corporation Act which permits amendment of articles of incorporation to add or change a provision.

"[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." (Emphasis added). Dunton v. South Carolina Board of Examiners of Optometry, 291 S.C. 221, 353 S.E.2d 132, 133 (1987). Therefore,

the Board's historic interpretation of savings and bank laws as not authorizing such a conversion would be likely to be upheld by the courts.

Despite the references in §§ 34-28-20, 34-28-230 and 33-10-101, the Board's interpretation appears to be consistent with South Carolina law. Other parts of the Savings Association Act, of which §34-28-230 is a part, specifically provide for the conversion of federal savings associations into state chartered savings associations and the conversion of state chartered associations into federal associations. Sections 34-28-200 and 34-28-210 (Act #124, 1985 Acts 389). Section 34-28-220 also provides for the conversion of a state or federal mutual association to a state capital stock association. In addition, §34-1-110 authorizes the Board to permit state chartered savings associations to engage in any activities authorized for federally chartered savings associations. I also note that §34-3-810 contains provisions for conversion of a national bank into a state bank. None of these provisions expressly provide for the conversion of a state chartered savings association into a state chartered bank.

The rule followed in this State is, "expressio unius est exclusio alterius", which means that the ". . . enumeration of particular things excludes the idea of something else not mentioned." Pennsylvania Nat. Mut. Cas. Ins. v. Parker, 282 S.C. 546, 320 S.E.2d 458, 463 (Ct. App. 1984); Sutherland Statutory Construction, Vol. 2A §47.23. Although §§34-28-20, 34-28-230 and 33-10-101 appear to provide some general authority for such a conversion, the specific provisions for other types of conversions and for the exercise of banking powers by savings associations without any statutory reference to the conversion of a state chartered savings association into a state chartered bank, may indicate that the legislature did not intend for this type of conversion to occur absent future statutory provision.

Therefore, for the foregoing reasons, a court would be likely to uphold the Board's historic interpretation of South Carolina law as not authorizing conversions of state savings associations into state chartered banks. The safest legal course of action would be to receive specific legislative authorization before the Board approves any such conversion.

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. I hope that this information is of assistance to you.

Yours very truly,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

JESjr./fg