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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 26, 1996

The Honorable Harry B. "Chip" Limehouse, III
Member, House of Representatives
Room 320-D Blatt Building
Columbia, S.C. 29211

Re: Informal Opinion

Dear Representative Limehouse:

You have requested advice as to the legality of a political subdivision's participating in a deferred compensation plan offered by an insurance company. In particular, you ask whether insurance companies constitute trust companies under S.C. Code Ann. § 8-23-70 (1986).

As you know, § 8-23-70 (1986) permits school districts and other subdivisions to contract with various financial institutions for participation in deferred compensation programs offered by those institutions. See Ops. Atty. Gen. (December 8, 1993 and June 26, 1981). The institutions named are "savings and loan associations, banks, trust companies and credit unions." The term "trust company" is not defined in this statute or elsewhere in the Code. See § 34-21-210 (1987);¹ however, under § 34-21-210, a "trust institution" is defined as, in part, to be "under the supervision of the Comptroller of the Currency...or the Federal Reserve System or the [State Board of Financial Institutions²]" See also Ops. Atty. Gen. (November 5, 1980). In addition, § 8-23-70 further provides as follows:

"...(b) all deferred amounts shall be held in

¹ "Trust institution" defined to include banks, savings and loan associations and undefined "trust compan[ies]" among other financial institutions named therein.

² See § 34-1-10 (1987) as to use of this term instead of Board of Bank Control.

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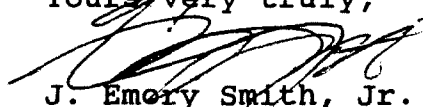
accounts, certificates of deposit or other forms of savings vehicles which are insured by the Federal Savings and Loan associations in the case of savings and loan associations, the Federal Deposit Insurance Corporation in the case of commercial banks, and the National Credit Union Administration in the case of credit unions."

Therefore, in order to offer deferred compensation plans to political subdivisions, an insurance company would, at least, have to fall within the definition of "trust institution" under § 34-21-210 and be subject to the supervision of one of the entities named therein. The company would also have to hold the deferred amounts in one of the above named insured forms under § 8-23-70. If these requirements are met and a question exists as to whether any other requirements must be met, please let us know.

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.

Please contact me if you have other questions.

Yours very truly,



J. Emory Smith, Jr.
Assistant Deputy Attorney General

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