1981 WL 158225 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 7, 1981

***1 Re: Opinion Request—Qualification of Foreign Banks in South Carolina**

The Honorable John T. Campbell
Secretary of State
P. O. Box 11350
Columbia, South Carolina 29211

Dear Mr. Campbell:
In your letter of February 9, 1981, you requested an opinion as to the qualification of foreign banks in South Carolina. Specifically, the question posed by Randall Unger, of C T Corporation System, was whether or not banks conducting non-banking activities may qualify under the regular corporation laws of this State. An analysis of the applicable statutes reveals that they may not.

Section 33-23-10 of the South Carolina Code Ann. (1976) provides that: 'A foreign corporation may be authorized to do in this State any business which it is authorized to do in the jurisdiction of its incorporation, and which may be done in this State by a domestic corporation, but no other business.' Thus, a corporation which is engaged in banking in the state of its incorporation may only engage in banking in this State.

In order to conduct any banking activities in this State, the banking entity must be granted a charter which is granted only after the State Board of Bank Control has approved a written application therefor. S. C. Code Ann. (1976) § 34-1-70. It is interesting to note that the same procedure is followed in respect to banks and corporations doing trust business (§ 34-21-10), building and loan or savings and loan association (§ 34-25-20) and cooperative credit unions (§ 34-27-30). In regard to the trust business, § 34-21-20 of the S. C. Code Ann. (1976) states: 'All state banks, trust companies and fiduciary corporations doing a trust business shall be subject to examination by the State Board of Bank Control and shall be further subject to rules and regulations promulgated by the Board.' Thus, what some might consider to be non-banking activities are, nevertheless, because of their close relationship to banking, regulated under the banking laws rather than the general corporation laws.

It must also be pointed out that a banking corporation could not use its corporate banking name without qualifying under the banking laws of this State. S. C. Code Ann. (1976) § 34-3-10 provides: 'No person in this State shall use the word 'bank' or 'banking' in connection with any business, calling or pursuit other than a legalized incorporated banking institution.' Additionally, § 33-5-10 states:
'(a) No domestic corporation or foreign corporation authorized to do or in fact doing business in this State shall use a name which: . . .
(3) Contains any word or phrase or abbreviation or derivative thereof which implies that the corporation:
(A) Transacts or has power to transact any business, including, without limitation, the business of insurance, banking, or transportation, for which authorization, in whatever form and however denominated, is required under the laws of this State, unless the appropriate commission or officer has granted such authorization and certifies that fact in writing. (Emphasis added)

***2** Thus, if the corporate name even implied that the activity being conducted was banking, the corporation would have to be chartered under the banking laws of this State.

In summary, it is the opinion of this office that a foreign bank desiring to conduct activities in this State must be chartered by the State Board of Bank Control after a review of a written application. Such foreign bank could not qualify under the regular corporation laws of this State.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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