

1977 S.C. Op. Atty. Gen. 10 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-2, 1977 WL 24477

Office of the Attorney General

State of South Carolina

Opinion No. 77-2

January 3, 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.**

@TO: Commissioner of Banking

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 \(1951\).](#)

You have asked whether Aiken-Speir, Inc., a mortgage company wholly-owned by Bankers Trust, a state chartered bank, must comply with banking laws and regulations regarding the making of first and second mortgage.

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.

Accordingly, 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.

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