

1980 WL 120971 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 18, 1980

***1 Re: Michael R. Smith/First Federal Savings and Loan, Greenville**

L. Steve Mayfield
Executive Director
South Carolina State Housing Authority
2221 Devine Street, Suite 540
Columbia, South Carolina 29205

Dear Steve:

You have informed this Office that you wish our opinion concerning whether the South Carolina State Housing Authority will be in violation of its own rules, regulations or procedures or at odds with its bond agreements if it purchases the above-referenced loan. You have asked whether the above-referenced mortgagor, Michael R. Smith, should be considered employed by Platt Saco Lowell of Greenville, South Carolina, as of November, 1979 (the date of his firm commitment and closing), for the purpose of determining whether his income exceeds the maximum for the beneficiary class in Series B. Mr. Smith was a work co-op student at that time, which means that he would work for 6 months and then go to school at Clemson University for 6 months with the understanding that he would return to work after his school period ended. The program is a voluntary one between Saco Lowell and Clemson University and we understand that if a job were not available when one in Mr. Smith's status wished to return, Saco Lowell would have had no obligation to make one available to him.

It is the opinion of this Office that Mr. Smith was not employed in November of 1979, because he had left the employ of Saco Lowell in August of 1979 and had no enforceable right to re-employment in May of 1980, although he did, in fact, return to work at that time.

I have discussed this matter with you very capable Ms. Patricia Holmes as well as with Mrs. Louise S. Freeman, Administrative Assistant to the Vice President for Engineering for Platt Saco Lowell, and I have also reviewed the entire file containing correspondence between First Federal Savings and Loan and your office as well as Platt Saco Lowell.

This is an extremely close question because of the unusual status of one in the work co-op program. The question is whether Mr. Smith was legally unemployed in November of 1979 (when he was a full-time student) in light of the fact that he had every reason to expect that he would be returning to work the following May in the same job he left in August of the previous year. It is our opinion that Mr. Smith should probably not be considered 'employed' in the legal sense of that term because of the voluntary nature of this program and because his previous work did not qualify him for any type of tenure or vested employment with Saco Lowell. Therefore, Mr. Smith's prior or future income from Saco Lowell should not disqualify him from being a member of the beneficiary class at the time of his firm commitment (or closing).

Therefore, it is the opinion of this Office that the South Carolina State Housing Authority will not be in violation of its own rules, regulations, or procedures, nor will you be at odds with the bond agreements under which you operate if this loan is purchased. If you have any further questions on this matter, please feel free to contact me.

Sincerely yours,

***2** William P. Simpson
Assistant Attorney General

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