

1979 WL 43445 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 5, 1979

\*1 Mrs. Jimmie R. Boatwright  
Marion County Treasurer  
Marion, South Carolina 29571

Dear Mrs. Boatwright:

Reference is made to your letter of July 3, 1979, transmitting list of securities from Colonial State Bank, Marion, South Carolina, intended for deposit with you as Marion County Treasurer, to cover funds of Marion County deposited or to be deposited with Colonial State Bank.

Your letter requests an opinion from this Office as to whether the proposed security deposits 'are acceptable', in that you are 'responsible for these deposits', and want to be certain that 'they are fully covered.' You have furnished this Office with a copy of Ordinance No. 79-6-21, which includes the following under Section 3, Part I, of said Ordinance:

Provided, that no funds of Marion County in excess of the sum protected by the Federal Deposit Insurance shall be deposited by an officer thereof in any bank or banks unless such bank or banks shall file with the County Treasurer an indemnity bond in some approved surety company, or shall deposit with the County Treasurer, United States, State, County, Municipal, School District within the State, Federal Land Bank Bonds, or other bonds or Government Agency securities guaranteed by the United States, or county notes, to indemnify the County of Marion against any loss or damage which may arise by reason of such deposit, the indemnity to be not less than the maximum amount so deposited less the sum protected by the Federal Deposit Insurance, the sufficiency of the indemnity or security hereinabove provided for to be determined and approved by the County Treasurer and the chairman of the County Council in writing.

In letter to you of July 2, 1979, the Colonial State Bank apparently proposes to file the following securities to secure deposits of Marion County:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The Power of Attorney filed by the Colonial State Bank reflects the following description of the SBA guaranteed loans covered by the foregoing schedule:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

\*2 We have no difficulty in advising you that the two U. S. Treasury Notes referred to above constitute 'government agency securities guaranteed by the United States', within contemplation of Ordinance No. 79-6-21.

The SBA guaranteed loans, however, do not constitute 'government agency securities guaranteed by the United States', in that such loans are in the name of non-government agencies, and would not constitute government agency securities guaranteed by the United States. The borrowers on these loans are individual business entities, and the Small Business Administration merely guarantees payment of a participation percentage in the event of default by the borrower. If the bank in question became insolvent, Marion County would merely step into the shoes of the bank, and have to service the loans as long as said loans were in a current status. The SBA guarantee only comes into effect upon default by

the borrower. There is no known market for these notes, as contrasted to the marketable securities referred to in other portions of the Ordinance as suitable for protecting the deposits of Marion County.

Ordinance No. 79-6-21 requires that funds of Marion County in excess of the sum protected by FDIC shall not be deposited by an officer of Marion County in any bank, unless such bank 'shall file with the County Treasurer' an indemnity bond or shall deposit 'with the County Treasurer' certain governmental bonds, or government agency securities guaranteed by the United States, or county notes, to indemnify the County of Marion against any loss or damage which may arise by reason of such deposit. The Ordinance further provides that the sufficiency of the indemnity or security is to be determined and approved 'by the County Treasurer and the Chairman of the County Council.'

It is the opinion of this Office that SBA guaranteed loans do not constitute government bonds, and do not constitute government agency securities guaranteed by the United States. I have discussed this matter with State Treasurer Grady Patterson, who concurs in this opinion.

Yours very truly,

Victor S. Evans  
Deputy Attorney General

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