1979 S.C. Op. Atty. Gen. 138 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-101, 1979 WL 29106

Office of the Attorney General

State of South Carolina
Opinion No. 79-101
August 14, 1979

***1 SUBJECT: Banks and Banking; Statutes; Statutory Construction**
Section 34–23–30(B) of the South Carolina Code of Laws 1976, prohibits a foreign bank holding company from acquiring more than twenty-five (25%) percent of the voting shares of a South Carolina trust company.

TO: GRADY L. PATTERSON, JR.
Chairman
South Carolina State Board of Financial Institutions

QUESTION PRESENTED:

Does The State Bank Holding Company Act, Section 34–23–30(B) of the South Carolina Code of Laws, 1976, prohibit the acquisition by a foreign bank holding company of more than twenty-five (25%) percent of the voting shares of a South Carolina trust company which is engaged purely in the trust business?

AUTHORITIES:

The Federal Bank Holding Company Act of May 9, 1956, ch. 240, 70 Stat. 133;

The State Bank Holding Company Act of 1965 (Act No. 277 of 1965);

12 U.S.C. § 1841, et seq. (1976);

§ 34–23–10, et seq., of the South Carolina Code of Laws (1976);

Cal. Fin. Code § 3360 (West);

Ga. Code § 13–201;

Mass. Gen. Laws Ann., ch. 167, § 1 (West);

Jones v. South Carolina Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1976);

Harling v. Board of Commissioners of Police Insurance and Annuity Fund, 205 S.C. 319, 31 S.E.2d 319 (1974);

United States v. Philadelphia National Bank, 374 U.S. 321, 326, 83 S.Ct. 1715, ——, 10 L.Ed.2d 915, 923 (1963);

12 C.F.R. § 225.4(a)(4), (5) (1978);

10 Am.Jur.2d Banks § 11 (1963);

73 Am.Jur.2d Statutes § 194 (1974);

9 C.J.S. Banks and Banking

1 A Sutherland, Statutory Construction §§ 27.01 and 27.02 (1972); and

Staff Report for the Committee on Banking and Currency, The Growth of Unregistered Bank Holding Companies—Problems and Prospects (GPO July 23, 1969)

DISCUSSION:

The First National Boston Corporation (FNBC) is a multi-bank holding company organized and incorporated under the laws of the State of Massachusetts. [1] Old Colony Trust Company of South Carolina is a proposed new trust company of South Carolina which intends to do business in South Carolina and to be organized and incorporated under the laws of South Carolina. It is further proposed that Old Colony will not accept demand deposits or time accounts from its clients and will not engage in commercial lending activities such as residential mortgages or automobile installment loans. Therefore, Old Colony will limit its business activities to 'pure' trust related functions, including personal, charitable, pension and corporate trust services. FNBC will be the sole stockholder of Old Colony. [2]

Section 34–23–30(B) of the South Carolina Code of Laws, 1976, provides inter alia, that:
Notwithstanding any language to the contrary herein, it shall be unlawful for any foreign holding company whether a bank holding company or otherwise, to acquire, direct or indirect, ownership or control of any voting shares of any bank, if after such acquisition, such foreign holding companies will, directly or indirectly, own or control more than twenty-five percent of the voting shares of any such bank . . ..

***2** It is uncontradicted that FNBC is a 'bank holding company' as defined in Section 34–23–20(b) of the Code. The only issue, therefore, is whether a 'pure' trust company is a 'bank' within the meaning of Sections 34–23–20(a) and 34–23–30(B) of the Code.

Section 34–23–20(a) defines 'Bank' as:
[A]ny national banking association or any state bank, savings bank, trust company, and all institutions doing any kind of banking business, whether organized under the laws of this State, the laws of another state, or the laws of the United States, engaged or authorized to engage in the business of banking in this State. (Emphasis Added).

Thus, by the literal terms of The State Bank Holding Company Act, Old Colony would be considered a 'bank'.
A statute is open to construction only where the language used therein requires interpretation or may reasonably be considered ambiguous. Thus where no ambiguity appears, it has been presumed conclusively that the clear and explicit terms of a statute express the legislative intention. A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscruity. 73 Am.Jur.2d Statutes § 194 (1974); See, Jones v. S. C. State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966); Harling v. Board of Commissioners of Police Insurance and Annuity Fund, 205 S.C. 319, 31 S.E.2d 319 (1944).

Using the foregoing rule of statutory construction, Old Colony would be a bank and FNBC would be prohibited from acquiring more than twenty-five (25%) percent of its voting stock.

While trust companies may be distinguished from banks within the ordinary sense of the term, for purposes of regulation a statute may classify trust companies with banks. 9 C.J.S., Banks and Banking § 2 (1938); 10 Am.Jur.2d, Banks § 11. Therefore, a legislature may, as a part of its legislative function, designate that words used in a particular statute shall carry specified meanings in those contexts. 1 A Sutherland, Statutory Construction § 27.01 (1972).
Statutory definitions of words used elsewhere in the same statute furnish official and authoritative evidence of legislative intent and meaning, and are usually given controlling effect . . . [for] to ignore a definition section is to refuse to give legal effect to a part of the statutory law of the state. Id. at § 27.02.

In Section 34–23–20(a), the Legislature has officially defined 'bank' to include a trust company for the purposes of The State Bank Holding Company Act, and that definition is controlling even though common usage and dictionary definitions may differ.

On May 9, 1956, Congress enacted The Federal Bank Holding Company Act, ch. 240, 70 Stat. 133. South Carolina's State Bank Holding Company Act of 1965 (Act No. 277 of 1965) was subsequently enacted as a valid exercise of this State's police power to regulate the business of banking. The purpose of both the federal and state acts was to prevent undue concentration of control of banking by bank holding companies and to prevent bank holding companies from controlling at the same time both banks and nonbanking enterprises. See, Staff Report for the Committee on Banking and Currency, The Growth of Unregistered Bank Holding Companies—Problems and Prospects (GPO July 23, 1969). Two provisions of the 1956 Act preserve and give Congressional approval to the right of the States to regulate the business of banking and bank holding companies. Section 3(d) provides that:
***3** No application shall be approved . . . which will permit any bank holding company . . . to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank . . . unless the acquisition of such shares or assets of a state bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located by language to that effect and not merely by implication. 12 U.S.C. § 1842(d) (1976). (Emphasis Added).

By this provision, Congress was directly encouraging the States to enact their own bank holding company laws which would complement the federal act. Section 7 of the Act reinforces this Congressional approval by preserving the right of the States to regulate the banking business and, thus, bank holding companies:
The enactment by Congress of The Bank Holding Company Act of 1956 shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof. 12 U.S.C. § 1846 (1976).

The South Carolina Act was patterned after The Federal Bank Holding Company Act of 1956 which originally defined a 'bank' as:
[A]ny national banking association or any state bank, savings bank or trust company, but shall not include any organization operating under Section 25(a) of the Federal Reserve Act, or any organization which does not do business within the United States. Act of May 9, 1956, ch. 240, § 2 c, 70 Stat. 133. (Emphasis Added).

Although subsequent amendments to the federal act in 1966 and 1970 have redefined 'bank' in terms of functions performed by the institution rather than the type of institution, no similar amendment has been enacted by the South Carolina General Assembly. Therefore, it must be concluded that Section 34–23–20(a) still includes trust companies within the definition of the term 'bank'. [3]

Moreover, 'trust company' as used in Section 34–23–20(a) is not limited to a trust company which engages in what some may refer to as 'commercial banking'. i.e., acceptance of deposits and making of loans. While it is true that Section 34–

23–20(a) refers to a 'trust company . . . engaged or authorized to engage in the business of banking', there is absolutely no evidence to indicate a legislative intent to restrict 'business of banking' to such a limited definition of 'commercial banking'. In fact, the case law indicates a broader definition of the term 'commercial banking'. The Federal Reserve Board in its Regulation Y has ruled that that trust business is 'so clearly related to banking . . . as to be a proper incident thereto'. 12 C.F.R. § 225.4(a)(4), (5) (1978). Furthermore, the United States Supreme Court in United States v. Philadelphia National Bank, 374 U.S. 321, 326, 83 S.Ct. 1715, ——, 10 L.Ed.2d 915, 923 (1963), found that the term 'commercial banking' denoted a 'congeries of services [including 'estate and trust planning and trusteeship services . . .. Id. at n. 5] and credit services'. Thus, even if the General Assembly did intend the phrase 'engaged or authorized to engage in the business of banking' to refer to 'commercial banking', trust services would still come within that definition.

CONCLUSION:

***4** A 'pure' trust company is a 'bank' within the meaning of Section 34–23–20(a) of the South Carolina Code of Laws, 1976. Therefore, Section 34–23–30(B) would prohibit a foreign bank holding company from acquiring more than twenty-five (25%) percent of the voting stock of such a trust company in South Carolina.

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Footnotes

1 FNBC has ten (10) domestic commercial bank and trust subsidiaries as well as finance companies, leasing companies, mortgage companies, 'venture capital' companies, 'Edge Act' companies, etc., the latter being variously located within fifteen (15) states and twenty-seven (27) foreign countries.

2 FNBC's principal subsidiary, First National Bank of Boston has been ranked the 17th largest bank in the United States on the basis of deposits and its trust department is also ranked 17th among bank trust departments.

3 Several other States, including California, Georgia, and Massachusetts, incorporate a trust company within its statutory definition of bank. See, Cal. Fin. Code § 3360 (West); Ga. Code § 13–201; Mass. Gen. Laws Ann., ch. 167, § 1 (West).

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