

1975 S.C. Op. Atty. Gen. 20 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3943, 1975 WL 22241

Office of the Attorney General

State of South Carolina

Opinion No. 3943

January 27, 1975

*1 The Honorable Grady L. Patterson, Jr.
State Treasurer
Post Office Box 11778
Columbia, South Carolina 29211

Dear Mr. Patterson:

You have presented the following question:

Pursuant to the provisions of Section 8–228, Code of Laws, 1962, as amended, can the approval of a majority of the board of directors of a bank be secured after a loan has been made?

I advise that, in my opinion, the approval of two-thirds of the whole board of directors of a bank must approve the loan prior to its being made.

Section 8–228 provides:

‘No director or other officer of any such bank shall borrow therefrom, except on good security, to be approved in writing by two-thirds of the whole board of directors of such bank—.’

Section 8–229 provides, in part:

‘If any director or other officer of any bank—shall:

‘(1) Borrow therefrom directly or indirectly except on good security approved in writing by two-thirds of the whole board of directors of such bank;

‘—he shall upon conviction—.’

In my opinion, the violation of the statute takes place when the act of borrowing has been consummated, and if a loan has been made without the necessary consent of the requisite majority of the board of directors at the time the loan is made, the express provisions of the statute are contravened. The authorities set forth below appear to clearly sustain the conclusions herein expressed, particularly State v. Duckett. Subsequent approval of security given for a loan already made does not vitiate the fact that the loan was made without the necessary approval and would not have the effect of making valid that which was invalid in its inception. The crime is complete when the borrowing is consummated without compliance with statutory requirements. State v. Lindberg. (dictum)

Very truly yours,

Daniel R. McLeod
Attorney General

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