



STATE OF ALABAMA
STATE BANKING DEPARTMENT

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July 11, 1995

MEMORANDUM

TO: Chief Executive Officers of
State-Chartered Banks

SUBJECT: Bank Investment in "Qualified Housing
Projects" - SBD Opinion No. 93-1

Subject opinion issued by this department on November 22, 1993, authorized investments in qualified housing projects by state-chartered banks. That memorandum outlined certain criteria necessary for state banks to develop before investing in such projects. These criteria were outlined in six (6) paragraphs. We have now reconsidered the criteria which we felt were necessary at that time, and the conclusion has been reached that paragraphs four (4), five (5) and six (6) are no longer necessary.

Effective July 11, 1995, SBD Opinion No. 93-1 is hereby amended by eliminating paragraphs four (4), five (5), and six (6).

Kenneth R. McCartha
Superintendent of Banks (Acting)

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STATE BANKING DEPARTMENT

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SBD OPINION NO. 93-1

November 22, 1993

TO: THE CHIEF EXECUTIVE OFFICER OF STATE CHARTERED BANKS

SUBJECT: Bank Investment in "Qualified Housing Projects"

Inquiry has been made as to whether state chartered banks in Alabama may invest in qualified housing projects and, if permitted, to what extent and under what conditions can such an investment be made. The question has been raised as to whether State Banking Board Regulation No. 1, Eligible Securities for Investment by State Chartered Banks, would apply and/or whether the legal lending limits provided in Section 5-5A-22 of the Alabama Banking Code might apply. Since neither Regulation No. 1 nor Section 5-5A-22 directly addresses such investments, our department will uniformly apply the following guidelines in regard to state bank investment in qualified housing projects or qualified housing project funds.

The Federal Deposit Insurance Corporation Improvement Act of 1991 specifically gives an insured state bank the authority to invest in Internal Revenue Code Section 42 properties, so called "qualified housing projects", up to 2 percent of total assets of the bank provided such investments are otherwise consistent with law. This department has seldom provided opinions which would further restrict its state banks from making individual judgement considerations when it comes to funding decisions. Such authority and responsibility is rightly placed on the bank's duly elected board of directors. However, due to the nature of the proposed investment, being somewhat eleemosynary in nature but providing investors legitimate tax advantages if properly administered, the State Banking Department further defines the following criteria necessary for state banks to develop before investing in such projects:

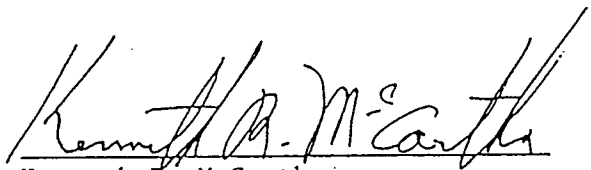
- (1) All the provisions and definitions set forth in the Federal Deposit Insurance Act, Section 24, and Part 362 of the Federal Deposit Insurance Corporation's Rules and Regulations must be met, unconditionally, before funding can be considered.
- (2) Bank investments in all such projects can not exceed 2% of total assets, provided the maximum investment in any one such fund or project does not exceed 10% of the bank's capital accounts (defined as capital stock, surplus, and undivided profits).
- (3) All investments in such projects will be carried on the bank's books as "Other Assets", with individual project funding readily identifiable on subsidiary ledgers.

*See letter to
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- ~~(4) Before any investment can be made, the bank's board of directors must have a clear understanding of the potential risks associated with such an investment and pass a resolution to that effect. The official minutes should also indicate adoption of this opinion by name (SBD Opinion No. 93-1).~~
- ~~(5) Only those projects or funds which would provide a direct benefit to the local communities of the State of Alabama can be considered as eligible for investment by state banks. Banks with market interests in communities in states contiguous to Alabama may, with the prior written approval of this office, invest in projects that would be of a direct benefit to those communities.~~
- ~~(6) All initial documentation, i.e. prospectus, summaries, etc., must be maintained in the bank's files, and financial information and updates on the projects and funds must be received by the bank on at least a quarterly basis. Such documentation must be maintained in the bank's files for a minimum retention period of two years beyond the payout of the project. A review of the financial information and/or updates, or ratification of a review made by a duly appointed committee, must be reflected in the official minutes of the bank's board of directors on at least a quarterly interval.~~

It is recognized that this opinion is being implemented on an effective date which may be subsequent to the participation of some bank's in bona fide projects or funds. However, if a state bank is participating in a project or fund prior to the effective date of this opinion, the bank's board of directors must, at the next regularly scheduled meeting, fully disclose its review of the provisions of this opinion and implement steps to fully comply with these provisions. In the event a bank has made an investment in a bone fide project or fund which exceeds the limitations set forth in provision (2) of this opinion, no further investments may be made in any such fund or project until such time as the bank's investment in the noncomplying project is rectified.

This opinion is effective November 22, 1993. However, it is paramount that the responsibility to fully investigate any such investment remains with the bank's board of directors before committing bank funds.


Kenneth R. McCartha
Acting Superintendent of Banks