

OFFICIAL OPINION NO. 76-121, Remote service units of state chartered savings and loan associations

December 16, 1976

Mr. Max A. Gors, Secretary
Department of Commerce and Consumer Affairs
State Capitol Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-121

Remote service units of state chartered savings and loan associations

Dear Mr. Gors:

You have submitted the following questions to this office and have requested my official opinion.

QUESTIONS:

1. Is it permissible under present statute for a state chartered savings and loan association to establish and operate remote service units in South Dakota?
2. Does the South Dakota Savings and Loan Board have authority under SDCL 52-8-24 to approve an operation of this type?

IN RE QUESTION NO.1:

The answer to question one is that it is my official opinion that it would not be permissible. SDCL 52-1-2 states:

No person shall engage in or transact the business of a savings and loan association in South Dakota without first complying with the applicable provisions of this title.

Also, SDCL 52-5-1 states:

An incorporated association operating under the provisions of this title shall have such powers as authorized by this title and the laws of this state including the general powers provided in §§52-5-2 to 52-5-11, inclusive. Said sections shall apply to domestic associations transacting the business of a savings and loan association in this state.

I can find no provision in Chapter 52 or the rules of the Savings and Loan Board authorizing a savings and loan association to engage in the operation of remote service units.

IN RE QUESTION NO.2:

My answer to your second question is also no, the Savings and Loan Board does not have authority under SDCL 52-8-24 to approve the use of remote service units.

SDCL 52-8-24 basically says that any state chartered savings and loan association that has insurance of accounts with the Federal Savings and Loan Insurance Corporation can make any loan or investment that a federally chartered savings and loan association can, even though not specifically authorized by state law. This particular statute addresses only the areas of loans and investments, and is not broad enough to cover the use of remote service units.

Besides the above limitation, I feel compelled to point out a possible deficiency in SDCL 52-8-24. The deficiency I speak of is the possible unconstitutional delegation of power found in that section. It reads in part as follows:

. . . then such additional loans, savings operations, and investments shall be made on the same terms and conditions and subject to the same limitations as are now permitted or as may hereafter be permitted in case of federal chartered savings and loan associations under presently existing or later adopted regulations of the federal home loan bank board and the rules and regulations for the federal savings and loan system or otherwise.

Our Supreme Court in *Schryver v. Schirmer*, 84 S.D. 325, 171 N.W.2d 634 (1969) said:

Statutes adopting laws or regulations of other states, the federal government, or any of its agencies, effective at the time of adoption are valid, *but attempted adoption of future laws, rules or regulations of other states, or of the federal government, or of its commissions and agencies generally have been held unconstitutional as an unlawful delegation of legislative*

power. (citations omitted) (emphasis added)

Therefore, I would suggest that the Division of Banking and Finance and the Savings and Loan Board seriously consider changing SDCL 52-8-24 in light of the above. See also *Hogen v. South Dakota State Board of Transportation*, ____ S.D. ____, 245 N.W.2d, 493 (1976), a case in which our Supreme Court reaffirmed the unconstitutional delegation of power rule.

Respectfully submitted,

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