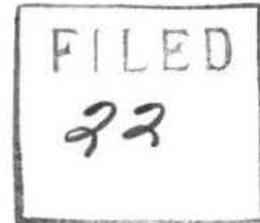


BANKS: Rules and regulations proposed by
RULES AND REGULATIONS: the Commissioner of Finance providing that state banks and trust companies may purchase securities of a corporation carrying on a project which is predominantly service, community or public in nature when such purchase has been authorized by the Comptroller of the Currency as a proper investment for national banking associations are a valid exercise of his rule making authority and may be enacted if approved by the State Banking Board.

OPINION NO. 22

May 22, 1972

Mr. H. Duane Pemberton
Commissioner of Finance
Division of Finance
P. O. Box 716
Jefferson City, Missouri 65101



Dear Mr. Pemberton:

This is in response to your request for an opinion as to the legality of two proposed rules and regulations which you have submitted to the State Banking Board for its approval. The proposed rules and regulations and the accompanying preamble are as follows:

"WHEREAS, the American Bankers Association has formed a special corporation known as Minbanc Capital Corporation to make needed capital funds available to qualifying minority-owned banks, the shares in which company are being offered exclusively to banks; and

"WHEREAS, the President of the United States, the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation have lauded the utilization of this corporation and have urged the participation of all banks; and

"WHEREAS, the Comptroller of the Currency has authorized the purchase of stock in the corporation by national banks under the provisions of Section 7.7480 of the Comptroller's Manual and the provisions of Paragraph Eighth of 12 U.S.C. 24; and

Mr. H. Duane Pemberton

"WHEREAS, the Commissioner of Finance is empowered, under the provisions of Subsection 3. of Section 362.105, RSMo, with the approval of the State Banking Board, to issue orders granting such other powers and authorities as have been granted to financial institutions subject to the supervision of the Federal Government and which are necessary to enable banks and trust companies to compete; now therefore

"The Commissioner of Finance of the State of Missouri hereby adopts the following:

"170-1. Investment in Civic, Community or Public Projects.

1. In addition to the loans and purchases of securities authorized under Section 362.170, RSMo, banks and trust companies may purchase the securities of a corporation carrying on a project which is predominantly service, community or public in nature, and not merely private or entrepreneurial.

2. The investment of any bank or trust company in any one project shall not exceed two (2) percent of its capital and surplus.

3. No such investment shall be authorized unless it has first been authorized by the Comptroller of the Currency as a proper investment for national banking associations.

4. The Commissioner of Finance and the State Banking Board shall approve the name of any corporation eligible for investments under the provisions of this regulation.

H. Duane Pemberton
Commissioner of Finance

Approved: State Banking Board

By: _____

Mr. H. Duane Pemberton

Date: _____, 1971

Effective Date: _____

"170-1. (A) Minbanc Capital Corporation

1. The shares of Minbanc Capital Corporation are approved for purchase by banks and trust companies under the provisions of Section 170-1. of the Rules and Regulations of the Commissioner of Finance, State of Missouri.

H. Duane Pemberton
Commissioner of Finance

Approved: State Banking Board

By: _____

Date: _____, 1971

Effective Date: _____"

Generally, a Missouri state bank is prohibited from investing in or holding for investment purposes the stock of a private corporation by Section 362.170.1(7), RSMo 1969, which provides:

"1. No bank or trust company subject to the provisions of this chapter shall

* * *

"(7) Invest or keep invested in the stock of any private corporation, except as provided in subsection 2."

The prohibition in Section 362.170.1(7), RSMo, uses the words "invest" and "investment" with respect to the stock of a private corporation. We find it significant that these statutes do not absolutely prohibit the purchase or ownership of stock of a private corporation. The words "invest" and "investment" are not expressly defined in the Missouri banking law. The word "invest" has the following dictionary definitions:

Mr. H. Duane Pemberton

"1: to commit (money) in order to earn a financial return 2: to make use of for future benefits or advantages" (Webster's Seventh New Collegiate Dictionary)

"1a: to commit (money) for a long period in order to earn a financial return . . ."
(Webster's New Third International Dictionary)

"To loan money upon securities of a more or less permanent nature, or to place it in business ventures or real estate, or otherwise lay it out, so that it may produce a revenue or income. . . ." (Citing Drake v. Crane, 127 Mo. 85, 29 S.W. 990 (1895); Black's Law Dictionary (4th Edition))

Each of those definitions emphasizes the concept of expectation of financial gain or return. With respect to the Minbanc Corporation, you have informed this office that the purpose of that corporation is to assist and promote minority owned banks. You further indicate that banks will not acquire stock in the Minbanc Corporation with the primary expectation of earning a financial return on such stock. You indicate the banks would purchase stock of Minbanc Corporation out of a sense of social commitment and a desire to assist minority owned banks in contributing to the economic development of, and in rendering more effective service to, communities in which they are located.

Since banks would not be acquiring stock of the Minbanc Corporation with the intention of earning income or return upon their investment, but rather with the intention of assisting minority banks to better serve minority communities, we are of the opinion that acquisition of Minbanc Corporation stock by a bank in this state would not be an investment in the stock of a private corporation which is prohibited by Section 362.170.1(7), RSMo.

We further note that while national banks are prohibited from acquiring shares of stock of private corporations by the provision of 12 U.S.C. 24, the United States Comptroller of the Currency has approved the acquisition of shares of Minbanc Corporation (Comptroller's Manual, Interpretative Rulings, 7.7480). Similarly, the Board of Governors of the Federal Reserve System has ruled that the acquisition of shares in the Minbanc Corporation by state member banks is not prohibited by the prohibition on state member banks acquiring stock contained in 12 U.S.C. 335.

Your proposed rules and regulations 170-1 and 170-1 (A) are proposed under Section 362.105.3, RSMo 1969, which provides:

Mr. H. Duane Pemberton

"In addition to the powers and authorities granted in this section, the commissioner of finance may, from time to time, with the approval of the state banking board, issue orders granting such other powers and authorities as have been granted to financial institutions subject to the supervision of the federal government and which are necessary to enable banks and trust companies to compete. The orders shall be promulgated as provided in section 361.105, RSMo, and shall not be inconsistent with the constitution and the laws of this state."

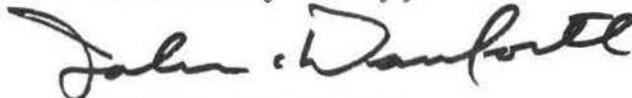
Inasmuch as national banks are permitted by the Comptroller of the Currency to invest in the Minbanc Capital Corporation and similar corporations, we believe that you, in your discretion, are warranted in concluding that such investments are necessary to enable state banks and trust companies to compete with the national banks. Furthermore, because we have found that investments of the type covered in your proposed rules and regulations are not prohibited by Section 362.170.1(7), RSMo, or other statutory or constitutional provisions, we find that your proposed rules and regulations are not inconsistent with the Constitution or the laws of this state.

CONCLUSION

It is the opinion of this office that rules and regulations proposed by the Commissioner of Finance providing that state banks and trust companies may purchase securities of a corporation carrying on a project which is predominantly service, community or public in nature when such purchase has been authorized by the Comptroller of the Currency as a proper investment for national banking associations are a valid exercise of his rule making authority and may be enacted if approved by the State Banking Board.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General