

OFFICE OF THE ATTORNEY GENERAL

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Honorable Velma B. Hosey
License Commissioner
Tuscaloosa County
P. O. Box 292
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Licenses - Banks - Taxation

Banks, credit unions, and savings and loan companies are not required to obtain a license under Code of Alabama 1975, § 40-12-83.

Dear Ms. Hosey:

Your letter dated March 28, 1979, requesting an opinion from the Attorney General has been referred to my desk for reply. Basically your request was as follows:

"Are banks, credit unions, and savings and loan companies operating in Alabama required to purchase a license under Code of Alabama 1975, §40-12-83?"

Code of Alabama 1975, §40-12-83, as stated in your request, imposes a license on those persons engaged in discounting or buying conditional sales contracts, drafts, acceptances, etc. Section 40-12-83 provides:

"(a) Each person engaged in discounting or buying conditional sales contracts, drafts, acceptances, notes or mortgages on personal property shall pay an annual license tax as follows: employing capital of \$50,000 or less, \$5.00; \$50,000 to \$100,000, \$10.00; \$100,000 to \$150,000,

"\$15.00; \$150,000 to \$300,000, \$25.00; \$300,000 to \$500,000, \$100.00; \$500,000 and up, \$300.00, the payment of which shall be sufficient to engage in business in any county of the state except the county in which the principal office is located, in which case the county license tax shall be one-half of the above schedule.

"(b) Each person engaging in business of lending money on salaries or making industrial or personal loans shall pay an annual license tax of \$100.00 for each county in which he engages in business."

It is my opinion that banks, credit unions, and savings and loan companies would not be required to purchase a license under the above Section. As authority for the position that banks are not required to purchase a license under the provisions of the above quoted Section, Code of Alabama 1975, §5-1-5 must be examined. Section 5-1-5 levies an annual assessment fee on banks engaging in the banking business in the State of Alabama, and provides:

"Each bank, whether a private bank or a corporation carrying on a banking business in the state of Alabama, shall, on the call of the superintendent of banks, annually pay to the bureau of banking between January 1, and April 1, of each year, or at such other times as the superintendent of banks may call the same, an assessment fee based on the total resources of the bank as shown by its last report to the bureau of banking made by the bank on the next preceding January 1. . . . No other assessment or license of any kind shall be levied against or collected from any bank or banking institution, except the ordinary taxes assessed against property in general, and except as may be specifically provided for in this Code."
(Emphasis supplied)

Therefore it is my opinion that the annual assessment of banks levied by the Superintendent of Banks is in lieu of all other licenses imposed by the State of Alabama except general property taxes, and banks engaged in the banking business in the State of Alabama would not be liable for a license under §40-12-83.

Concerning the applicability of §40-12-83 to credit unions, it is my opinion that Code of Alabama 1975, §5-17-24 is controlling. Section 5-17-24 provides:

"A credit union shall be deemed an institution for savings and, together with all the accumulations therein, shall not be subject to taxation except as to real estate owned, as to the franchise tax required of other corporations and as to the excise tax required of financial institutions. The shares of a credit union shall not be subject to taxation or to a stock transfer tax when issued by the corporations or when transferred from one member to another."

Therefore it is my opinion that as a result of §5-17-24, credit unions are not required to obtain a license under the provisions of §40-12-83.

In regard to savings and loan associations, it must be kept in mind that the savings and loan associations are specifically prohibited from engaging in such mortgage brokerage business as is governed by §40-12-83. Code of Alabama 1975, §5-16-48 specifically prohibits savings and loan associations from engaging in the mortgage brokerage business, purchase of loans, or purchase and sale of mortgages. In addition, a savings and loan association is required to pay an annual fee and assessment under the provisions of Code of Alabama 1975, §5-16-38. Finally, it is my opinion that the State Banking Department has exclusive jurisdiction over the regulation and licensing of banks, credit unions and savings and loan associations. Code of Alabama 1975, §5-2-3 provides:

"The state banking department shall administer the laws of this state which regulate or otherwise relate to corporations and individuals doing or carrying on a banking business or operating a credit union in the state, all laws relating to savings and loan associations doing business in this state and all laws relating to persons, firms or corporations engaging in the small loan business in this state. The authority of the state banking department to perform such functions shall be exclusive."

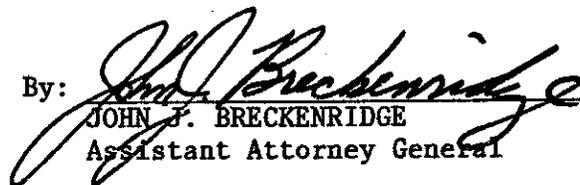
Therefore it is my opinion that the State Banking Department would have exclusive jurisdiction over the licensing of banks, credit unions and savings and loan associations.

I hope I have fully answered the questions contained in your letter, and if I can be of any further service to you in this matter, please do not hesitate to contact me.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By:


JOHN F. BRECKENRIDGE
Assistant Attorney General

JJB/mr