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LETTER

59-129-L

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September 18, 1959

Honorable Bill Stephens
 Honorable David H. Campbell
 Members of House of Representative
 State Capitol Building
 Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Sirs:

As members of the Sub-committee on Banking, Insurance and Corporations of the House of Representatives, you have requested an opinion upon the following questions:

1. Are Thrift Companies operating in Arizona subject to the jurisdiction, supervision and examination of the State Banking Department under the terms of Section 6-121 A.R.S. with particular reference to the phrase "other financial institutions?"
2. If your answer to the above question is in the negative are Thrift Companies then subject to the jurisdiction, supervision and examination of the Securities Division of the Arizona Corporation Commission as defined in Section 44-1801 A.R.S.?
3. What other sections of the Arizona Revised Statutes may currently be interpreted as pertaining to the operation of Thrift Companies?

Question No. 1: "Thrift Companies" is a trade name. The name, in itself, does not indicate the methods such companies use in their operation. They are generally known by the public as financial institutions dealing in money. Each plan of operation by such companies must be investigated to determine whether or not they are subject

Honorable Bill Stephens
Honorable David H. Campbell
September 18, 1959
Page Two

to regulation as indicated by your Question No. 1. A "Thrift Company" is a "Security Company" if its method of operation falls with the provisions of A.R.S. §6-101, Paragraph 5, which provides:

- "5. 'Security company' means a Morris Plan Company, or any person, partnership, association or corporation receiving from the public money on deposit and issuing certificates of deposit or pass books, or any evidence of deposit therefor, whether the money is paid in cash or by regular or irregular installments or otherwise, but does not include banks, building and loan associations, saving and loan associations, credit unions, industrial banks, small moneylenders or insurance companies."

The information which the Attorney General has available indicates that so-called "Thrift Companies" fall within the foregoing definition of a "Security Company" because each of them is a "person, partnership, association or a corporation receiving from the public money on deposit and issuing certificates of deposit or pass books, or any evidence of deposit therefor, whether the money is paid in cash or by regular or irregular installments or otherwise."

Therefore, under that definition and such situation "Thrift Companies" are subject to the jurisdiction of the State Banking Department. The Legislature by Laws 1933, Chap. 97, § 1, amended by Laws 1954, Chap. 37, § 1, added "Security Companies" to the definition of financial institutions, thereby disclosing the intention of the Legislature to bring such financial institutions under the jurisdiction of the State Banking Department, by adding them to financial institutions theretofore defined.

A.R.S. §6-121 and §6-122 confer upon the Superintendent of Banks specific and comprehensive powers to regulate financial institutions coming under his jurisdiction, such as Thrift Companies when they operate as "Security Companies". In addition to exercising the powers so conferred, A.R.S. §6-124 authorizes the Superintendent of Banks and his deputies to examine persons under oath and to compel the attendance of witnesses and the production of books and papers.

Honorable Bill Stephens
Honorable David H. Campbell
September 18, 1959
Page Three

The Superintendent of Banks is given plenary authority over a "Security Company". A.R.S. §6-422 provides as follows:

- "A. The superintendent shall notify a building and loan association or security company, in writing specifically setting forth the irregularities and matters complained of by him when it appears to him that any one of the following has occurred:
1. The building and loan association or security company has violated the provisions of its articles of incorporation, its by-laws or any law of this state.
 2. The association or company is conducting business in an unsafe or unauthorized manner.
 3. The association or company refuses to submit its books, papers and records to the inspection of the superintendent or an examiner.
 4. An officer of the association or company refuses to be examined upon oath touching the affairs of the association or company.
 5. From an examination or report provided for, the superintendent has reason to conclude that the association or company is in an unsound or unsafe condition to transact business or that it is unsafe and inexpedient for the association or company to continue business. (Emphasis supplied)
- B. The superintendent at the same time shall forward a copy of the objections to the Attorney General."

Thereupon, if the irregularities are not corrected forthwith, the Superintendent of Banks, as provided by A.R.S. §6-423, shall notify the Attorney General of that fact and thereupon the Attorney General is authorized to

Honorable Bill Stephens
Honorable David H. Campbell
September 18, 1959
Page Four

59-129-L

proceed, pursuant to that section, to correct the irregularities and, under A.R.S. §6-424, to institute an action in the Superior Court for the appointment of a receiver, if the Attorney General concludes such course is justified by the irregularities presented to him by the Superintendent of Banks.

Furthermore, Thrift Companies may be conducting a "banking business" as defined by A.R.S. §6-241 as follows:

"A person holding himself out to the public as receiving money on deposit, whether evidenced by certificate, promissory note or otherwise, is considered to be doing banking business and subject to the provisions relating to the banking business."

The foregoing section is found within A.R.S. Article 3, Chapter 2, Title 6, which pertains generally to the regulation and conduct of banking business.

Therefore, the Superintendent of Banks has all the regulatory powers with respect to Thrift Companies, when they are engaged in the businesses herein defined, as he has in the regulation of banks and savings and loan associations, including and relating to insolvency, dissolution and receivership as provided by A.R.S. Chapters 2 and 3, Title 6.

Question No. 2: In view of the answer to Question No. 1, an answer to Question No. 2 is not required.

Question No. 3: The Attorney General does not find other provisions of the Arizona Revised Statutes which pertain to the operation of Thrift Companies as referred to in Question No. 3.

A word of caution should be added. Whether or not a Thrift Company comes under the definition of A.R.S. §6-101 depends on the definition given to the word "deposit." There is authority for the argument that deposits, when used in connection with banking business, means deposits of money under agreement whereby the depositor is entitled to receive a like amount of money on demand and that deposit under any other agreement, as for instance, with a Thrift Company where the agreement specifies that the so-called depositor must leave his money deposit for a specified period.

Honorable Bill Stephens
Honorable David H. Campbell
September 18, 1959
Page Five

of time, constitutes a loan and under this theory there would be a question as to whether the Thrift Companies come within the purview of A.R.S. §6-101. We think, however, the intent of the Legislature is clear that in this definition the word "deposit" is not used alone but is used with additional descriptive words as follows:

- "5. 'Security company' means a Morris Plan Company, or any person, partnership, association or corporation receiving from the public money on deposit and issuing certificates of deposit or pass books, or any evidence of deposit therefor, whether the money is paid in cash or by regular installments or otherwise,..."

By virtue of previous interpretation, the Arizona Superintendent of Banks has not heretofore exercised jurisdiction over Thrift Companies and it is possible that if the Superintendent now assumes jurisdiction some legal action could be commenced to declare the intent of this statute. In such event, the Superintendent of Banks would probably not be able to exercise jurisdiction over the Thrift Companies until such action was finally determined. It is therefore suggested that the Legislative Committee may want to consider amending the above statutes to insure the jurisdiction of the Superintendent of Banks over Thrift Companies.

Very truly yours,

WADE CHURCH
The Attorney General

LESLIE C. HARDY
Chief Assistant Attorney General

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