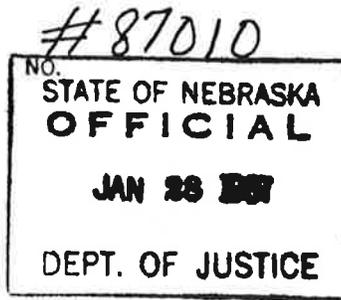


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

January 26, 1987



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

SUBJECT: State Chartered Savings and Loan Associations

REQUESTED BY: Senator Gary E. Hannibal

WRITTEN BY: Robert M. Spire, Attorney General, LeRoy W.
Sievers, Assistant Attorney General

QUESTION: Is legislation necessary for state chartered savings and loan associations to operate in states other than Nebraska?

CONCLUSION: No.

In your letter you attached the draft of proposed legislation which would have the effect of allowing state chartered savings and loan associations to operate in states outside of Nebraska. You asked if current law prohibits such institutions from operating in other states and if not, is the proposed legislation necessary.

Neb.Rev.Stat. §8-355 (Cum.Supp. 1986) provides in part: Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of July 17, 1986, by a federal savings and loan association doing business in Nebraska. . . .

As of July 17, 1986, federal savings and loan associations doing business in Nebraska were permitted to operate outside of Nebraska if they met certain qualifications. Such operation was authorized by 12 U.S.C. §1464(r) and 12 C.F.R. Part 556.5(a)(3)(i)(a)(1). Moreover, no specific prohibition is apparent in the statutes governing state chartered savings and loan associations. However, in order to operate outside of

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Nebraska such institutions would have to comply with any applicable federal and/or the laws of the other state in which it seeks to operate. Also, the association would also have to obtain permission from the Nebraska Department of Banking and Finance to operate in another state. This is required whether the association seeks to operate a branch, merge, acquire another financial institution, or in some other manner operate in another state.

In First Federal Savings and Loan Association v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971), the Nebraska Supreme Court determined that opening a branch of a state chartered savings and loan required a due process opportunity for notice and hearing and that the institution meet the criteria for the opening of an institution of that type. This requirement existed despite the lack of specific language to that effect in the statutes because:

We hold that a reasonable interpretation of §8-331, R.R.S. 1943, and other statutes dealing with regulation and control of savings and loan associations necessarily implies the power of the Department of Banking to approve or disapprove the establishment and operation of branch offices of savings and loan associations chartered and operating under the laws of this State. We also hold that legislative standards for the granting of an application for initial establishment of a savings and loan association operation under §8-331 R.R.S. 1943, also apply to an application to establish a branch office.

Id. at 566-7. The supreme court has thus indicated that the Department of Banking and Finance's implied authority to require an application is based upon the legislative intent to protect the public and guard against economically destructive competition. That intent would not disappear simply because the branch happened to be located outside of Nebraska. The harm to state chartered savings and loan associations and the public that the legislature has sought to prevent could occur if a state chartered savings and loan sought to operate in a location outside of Nebraska. Therefore, by analogy from the reasoning used by the court in the above-mentioned case, the savings and loan would need to obtain permission from the Department of Banking and Finance to operate outside of Nebraska and would only be entitled to do so if it could demonstrate compliance with the statutes authorizing an initial establishment.

However, just as there was no need for a specific statute authorizing branch operations, there is no need for a specific statute authorizing operation outside of Nebraska so long as

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state chartered savings and loan associations comply with current statutes designed to protect the public and guard against economically destructive competition.

Sincerely,

ROBERT M. SPIRE
Attorney General

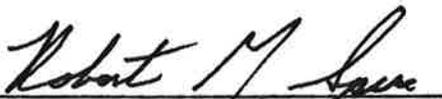


LeRoy W. Sievers
Assistant Attorney General

LWS:kmw

cc: Patrick O'Donnell
Clerk of the Legislature

Approved:


Attorney General