



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
201 EAST MARKHAM STREET
HERITAGE WEST BUILDING
LITTLE ROCK, ARKANSAS 72201

(501) 371-2007

October 1, 1986

Opinion No. 86-356

Honorable Henry J. Osterloh
State Representative
1314 Starfield
North Little Rock, AR 72116

RE: Applicability of Act 877 of 1985 to Condominium
Developments

Dear Representative Osterloh:

Act 877 of 1985 authorizes state chartered banks, bank holding companies, and/or their subsidiaries to engage in real estate investment and development subject to certain restrictions and limitations.

You have requested an opinion as to the following specific issues:

1. Whether Act 877 authorizes a state bank, bank holding company and/or their subsidiaries to engage in real estate investment and development where the project is condominium units which will be developed and constructed at the same time.
2. Whether Act 877 authorizes a state bank, bank holding company and/or their subsidiaries to engage in real estate investment and development where the project is a condominium development consisting of five or more condominium units which will all be developed and constructed at the same time.
3. Whether Act 877 authorizes a state bank, a bank holding company and/or their subsidiaries to engage in real estate investment and development where the project is a condominium development consisting of twenty-six (26) total condominium units in three different buildings, one building containing three units, a second building containing twelve units and the third building containing eleven units, and where the project will be

developed in two different phases, the first of which shall be the development and construction of the three-unit building and the twelve unit building at the same time, and the second phase will be done later and will consist of the development and construction of the third eleven-unit building, all twenty-six (26) condominium units being part of a typical condominium horizontal property regime and not zero lot line units.

Act 877 contains the following restrictive language:

"Other than the investment and development of single family lots and actual construction of single family residences consisting of one through four family units
...."

Act 877 draws no distinctions with regard to ownership or method of holding title of the real estate investment or development but addresses the physical nature of the project itself - i.e., "investment and development of single family lots and actual construction of one through four family units".

The phrase "single family lot" is self defining and needs no further clarification. However, the meaning of "single family residences consisting of one through four family units" is somewhat ambiguous and requires interpretation of the legislative intent and the context within which this phrase is used in the Act.

It appears that the purpose of restricting Arkansas chartered financial institutions from engaging in investment and development of single family lots and actual construction of single family residences consisting of one through four family units is to protect smaller developers and limit banks to investment in larger commercial and multi-family developments. This interpretation of legislative intent makes it clear that the phrase "single family residences consisting of one through four family units" in actuality means "structures consisting of one through four family units....".

In specific response to all three of your questions set forth above, since Act 877 draws no distinction between condominium development and other forms of ownership, it therefore follows that a state bank, bank holding company and/or their subsidiaries are authorized to engage in real

Honorable Henry J. Osterloh
Page 3
October 1, 1986

estate investment and development where the project is condominium units provided that the project consists of five or more condominium units all contained within the same structure.

The foregoing opinion which I hereby approve was prepared by Deputy Attorney General Dan Kennett.

Sincerely,



STEVE CLARK
Attorney General

jsc:DK:dc