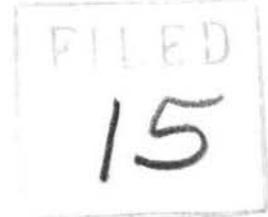


DEVELOPMENT: A development finance corporation formed
FINANCE CORPORATION: under the provisions of Chapter 371, RSMo,
may borrow money from any number of persons
including members at the same time. Money borrowed from nonmembers
may be secured as provided by Section 371.130 (4), RSMo Supp. 1965,
in any priority.

OPINION NO. 15 (1967)
OPINION NO. 147 (1966)

March 23, 1967

Honorable Donald C. Anton
Office of General Counsel
Small Business Administration
Washington, D. C. 20416



Dear Mr. Anton:

This is in answer to your request for an opinion concerning Section 371.130 (4), RSMo Supp. 1965, and asking whether under this provision a development finance corporation may "borrow money from any number of persons at the same time and issue any type of security in any priorities or none to the lenders individually except from members" of the development finance corporation.

Chapter 371, RSMo, was enacted to establish a source of credit known as development finance corporations for the promotion, development and conduct of expanded business activities in the state. Section 371.010, RSMo Supp. 1965.

Section 371.130, RSMo Supp. 1965, enumerates the powers of such development finance corporations and subsection 4 which empowers the corporation to borrow money reads as follows:

"(4) To borrow money and otherwise incur indebtedness for any of the purposes of the corporation; to issue its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, therefor; and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof;"

Section 371.120, RSMo Supp. 1965, requires members of the corporation to lend funds to the corporation and reads as follows:

Honorable Donald C. Anton

"1. The members of the corporation shall consist of such national and state banks, trust companies, stock or mutual insurance and surety companies as make application for membership in the corporation and membership becomes effective upon the acceptance of the application by the board of directors.

"2. Each member shall lend funds to the corporation pursuant to the commitment of the member as and when called upon by the corporation to do so, but the total amount on loan by any member at any one time shall not exceed the following limit to be determined as of the time it became a member and shall thereafter be annually readjusted in the event of any change in the base of the loan limit of such member:

(1) National and state banks and trust companies, two per cent of capital and surplus;

(2) Stock insurance companies, two per cent of capital and surplus;

(3) Surety and casualty companies, two per cent of capital and surplus;

(4) Mutual insurance companies, two per cent of guaranty fund or of surplus whichever is applicable.

"3. All loan limits shall be established at the thousand dollar nearest to the amount computed on an actual basis.

"4. All cash for funds which members are committed to lend to the corporation shall be prorated among the members in the same proportion that the commitment of each bears to the aggregate commitment of all members.

"5. Upon written notice given sixty days in advance, a member of the corporation may withdraw from membership in the corporation at the

Honorable Donald C. Anton

expiration date of such notice and after the expiration date shall be free of obligations hereunder except those accrued or committed by the corporation prior to the expiration date.

"6. All loans to the corporation by members shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation which shall be freely transferable at all times and which bear interest at a rate of not less than one-fourth of one per cent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof in the city of St. Louis on unsecured commercial loans."

It is clear from reading the two sections that the members must lend funds to the corporation and that the corporation may borrow same. However, the corporation is not limited in subdivision 4 of Section 371.130, supra, to borrowing money only from members.

It is our opinion, then, that a development finance corporation may borrow money from any number of persons including members at the same time. The corporation may, upon incurring indebtedness from persons other than members, either secure or not secure such debts. If the debt is secured it shall be "by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof" and may furthermore be issued in any priorities.

CONCLUSION

It is the opinion of this office that a development finance corporation formed under the provisions of Chapter 371, RSMo, may borrow money from any number of persons including members at the same time. Money borrowed from nonmembers may be secured as provided by Section 371.130 (4), RSMo Supp. 1965, in any priority.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,


NORMAN H. ANDERSON
Attorney General