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ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS  
EXECUTIVE SECRETARY

SECURITIES DIVISION  
(602) 542-4242  
(602) 255-2600  
FAX: (602) 255-2617

August 1, 1991

Claudia V. Swhier, Esq.  
Barnes & Thornburg  
1313 Merchants Bank Building  
11 South Meridian Street  
Indianapolis, Indiana 46204

RE: Shelby County Savings Bank, FSB  
A.R.S. § 44-1844(A)(6)

Dear Ms. Swhier:

On the basis of the facts set forth in your letter of July 12, 1991, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter. This position is consistent with prior no-action letters issued by the Division. However, the Division is currently analyzing the breadth of the exemption found in A.R.S. § 44-1844(A)(6) and may take a different position on similar facts in the future.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have enclosed a copy of the Securities Division's rule R14-4-102 for your information. The rule adds an offering of securities made to not more than 10 persons to the class of transactions exempt under A.R.S. § 44-1844. Under this rule, the aggregate amount of the offering to be made within Arizona shall not exceed \$100,000, nor may any commission be paid by the issuer in connection with the distribution of securities. The Division does not have adequate facts in order to ascertain if the proposed transaction meets the requirements of this rule. However, you may make such a determination in your role as counsel.

Ms. Claudia V. Swhier  
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We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,



DEE RIDDELL HARRIS  
Director of Securities

DRH:MGB:wjw

Attachment

Address all communications to:  
Arizona Corporation Commission  
Securities Division  
1200 West Washington Street  
Phoenix, Arizona 85007

F. This exemption shall be effective for one year from the date the Notice of Intention to Sell Securities is acknowledged by the Director of Securities.

**14-4-102. Exempt transactions – Restricted public offering**

A. An offering of securities within or from this State which offering shall be made to not more than ten (10) persons shall be added to the class of transactions exempt under A.R.S. § 44-1844, provided that this exemption shall not be construed to apply to an offering to be made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842, and further provided that:

1. The aggregate amount of the offering to be made within or from this State shall not exceed \$100,000.00; and
2. No commission or remuneration of any kind, other than transfer agent's fees, shall be paid directly or indirectly by the issuer to any person in connection with the distribution or sale of such securities; and
3. A verified statement of the details and purposes of the offering and the financial condition of the issuer shall be filed with the Commission at least 10 days before the offering is made, and no material change in the details of the offering shall be effected hereafter without the consent of the Commission; and
4. Any subscription contract calling for deferred payments shall be subject to the approval of the Commission; and
5. If the issuer is not domiciled in this State or is not a corporation organized under the laws of the State, a consent to service (Uniform Form U-2) shall be filed with the details of the offering prescribed in Paragraph 2. above.
6. The issuer and any person acting on its behalf shall reasonably believe prior to making any sale that the investment is

suitable for the purchaser. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed 20 percent of the investor's net worth (excluding personal residence, furnishings therein and personal automobiles), it is suitable.

B. This exemption is not to be construed as providing "blanket" authority for an aggregate offering of \$100,000.00, but is available in specified amounts for specific purposes not in excess of \$100,000.00. Successive notices may be filed under this exemption from the same issuer until the total amount encompassed in such notices equals the maximum amount permitted in this exemption.

C. Form and contents of verified statement to be filed:

1. No particular form of instrument is prescribed for this offering, but the instrument shall contain the following information: the name of the issuer and conditions of offerings eligible for exemption under this section. The caption should, however, clearly indicate the full name of the issuer, the name of organization, and the state in which organized; and shall be entitled a "Notice of Intention to Sell Securities, pursuant to R14-4-102."

2. The details and purposes of the offering, to which reference is made in Subsection A. Paragraph 3. above, must be furnished in writing, including but not limited to a description of the securities to be sold, number of units and selling price per unit, method of offering, allocation of proceeds and statement of financial condition prepared in accordance with generally accepted accounting principles.

3. The text of the instrument must contain a recitation of the facts clearly indicating that all conditions affecting eligibility for exemption exist, and that the issuer has taken appropriate steps to authorize the issuance of securities.

4. The instrument shall be executed by an authorized officer of the issuer whose signature shall be verified under oath.

5. The principal business address, and mailing address, if different therefrom, must be shown.

Below the verification of signature, the following form for acknowledgment by the Commission shall be provided:

Receipt of the foregoing Notice of Intention to Sell Securities acknowledged as of the date indicated. The Commission enters objection to the offering described therein, and such offering be commenced \_\_\_\_\_, 19\_\_\_\_\_.

**ARIZONA CORPORATION COMMISSION**  
**Securities Division**

**Filing of notice and exhibits:**

The instrument is to be filed in duplicate (except that only one copy of the financial statement is required if such statement is attached to, rather than included in, the instrument) one copy of which shall be acknowledged and returned to issuer as evidence of filing.

One copy of any subscription form or written material describing, or to be used in connection with, the offering must be filed with the notice.

**Exemptions subject to denial and revocation:** The Commission may in its discretion at any time deny or revoke the exemption herein provided as to any issuer or issuers. In the event of a denial or revocation the issuer or issuers affected thereby shall be notified of such action by the Director of Securities Division of the Commission. Such notice shall be given by registered mail.

Address all communications to:  
Arizona Corporation Commission  
Securities Division  
1200 West Washington Street  
Phoenix, Arizona 85007

This exemption shall be effective for one year from the date the Notice of Intention to Sell Securities is acknowledged by the Director of Securities.

# BARNES & THORNBURG

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(317) 638-1313

FWX 810-341-3427 B&T LAW IND  
Telecopier (317) 231-7433

July 12, 1991

Mr. Dee R. Harris, Director  
Corporation Commission, Securities Division  
1200 West Washington Street, Suite 201  
Phoenix, Arizona 85007

Dear Mr. Harris:

In accordance with the Securities Act of Arizona (the "Act"), this letter is being submitted in order to obtain an interpretative opinion regarding the availability of the exclusion from the securities registration provisions of the Act contained in Section 44-1844(A)(6) to the offer and sale of common stock by Shelby County Bancorp ("Bancorp") in the following circumstances. In addition, if the exclusion is not available, we request a waiver of the securities registration requirements for such offers and sales pursuant to Section 44-1845 of the Act on the grounds that such registration is not necessary in the public interest or for the protection of investors. I have enclosed a check in the amount of \$200.00 for the interpretative opinion request.

## Factual Background

Shelby County Savings Bank, FSB ("Shelby"), which conducts its business from two offices located in Shelby County, Indiana, has adopted a Plan of Conversion pursuant to which it is converting from a federally chartered mutual savings bank to a federally chartered stock savings bank. The Plan of Conversion is subject to the approval of a majority of the votes held by the members of Shelby and will be effected through the sale of shares of common stock of Bancorp in a subscription offering. The subscription offering will coincide with a direct community offering. However the community offering will be limited to a few states and offers and sales in the community offering will not be made in the State of Arizona. The offering is being registered under the Securities Act of 1933.

Bancorp was recently formed for the purpose of offering the common stock and holding all of the capital stock of Shelby following the conversion. As a savings and loan holding company, Bancorp will be subject to regulation and supervision by the Office of Thrift Supervision (the "OTS").

In accordance with the OTS regulations, nontransferable rights to subscribe for the purchase of Bancorp's common stock have been granted under the Plan of Conversion to certain members of Shelby.

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Each savings, demand and other deposit account holder of Shelby with a deposit balance of at least \$50 as of December 31, 1990, has first priority subscription rights to purchase shares offered in the Conversion. Other eligible members who are savings, demand or other deposit account holders on a date (to be determined) in July or August, 1991 (the "Record Date"), and borrowers who were borrowers of Shelby on October 17, 1988, and remained such on the Record Date have second priority subscription rights to purchase shares offered to the extent sufficient shares remain available. A recent review of the records of Shelby indicated that there are only four (4) subscribers in Arizona. Each subscriber must purchase a minimum of 25 shares (and may subscribe to up to 7,187 shares) at a purchase price of \$10 per share.

At present, all savings, demand and other account holders of Shelby are members of, and have voting rights in, Shelby as to all matters requiring membership action. They are entitled to cast one vote for each \$100, or fraction thereof, of their deposits in Shelby, up to a maximum of 1,000 votes. Also, each borrower of Shelby as of October 17, 1988, if his or her borrowing is still outstanding, is a member and has one vote.

If Shelby were to liquidate as a mutual savings bank, all claims of creditors (including deposit account holders) would be paid first and, if there were any assets remaining, account holders would then receive such remaining assets, pro rata, based upon the deposit balances in their deposit accounts just prior to the liquidation.

#### Exclusion from Definition of Offer and Sale

Section 44-1844(A)(6) of the Act excludes from the securities registration provisions of the Act "[a]ny transaction or series of transactions incident to a statutory or judicially approved reorganization, merger, triangular merger, consolidation, or sale of assets, incident to a vote by securities holders pursuant to the articles of incorporation, the applicable corporate statute or other controlling statute . . . ." We believe that the exclusion provided in this Section of the Act should be deemed to apply to the proposed offer and sale by Bancorp of its common stock in the subscription offering. Such offers and sales are being made by Bancorp to the members of Shelby incident to the vote by the members on the conversion, as required by federal statute. Although the members are not security holders in the traditional sense, they have voting rights and rights upon liquidation that are similar to those associated with the ownership of securities. Similarly, although a conversion is not specifically included in

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the list of transactions contained in the Section, a conversion is a transaction of the same nature as those that are so listed. Further, we believe that the proposed transaction could be deemed a reorganization.

Request for Opinion

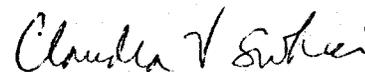
We hereby request an interpretative opinion that the exclusion from the securities registration provisions of the Act contained in Section 44-1844(A)(6) applies to the proposed transaction and, therefore, that the offer and sale by Bancorp would not be subject to the securities registration provisions of the Act.

In the event that you are unable to provide us with such an interpretative opinion, we request that you waive the securities registration requirements of the Act for the proposed subscription offering to the four eligible subscribers in your State, pursuant to Section 44-1845 of the Act. We do not believe that the public interest requires the registration of the offer and sale of common stock in the subscription offering to four persons in Arizona, or that such registration is required for the protection of those four investors. The offering materials used in the subscription offering will have been reviewed and cleared prior to their use by both the Securities and Exchange Commission and the Office of Thrift Supervision.

Please acknowledge receipt of this letter and the enclosures by file-stamping and returning the enclosed copy of this letter to the undersigned in the enclosed self-addressed envelope.

If you need any additional information or wish to discuss this matter further before responding, please do not hesitate to contact the undersigned. We appreciate your assistance in this matter.

Sincerely yours,

  
Claudia V. Swhier

CVS:lm  
Enclosures

CVS00873

BARNES & THORNBURG