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SPRINGFIELD

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FILE NO. S-1488

FINANCIAL INSTITUTIONS:
A Trust Department of a
Bank May Not Establish a
Branch Office

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Commissioner of Banks and Trust Companies
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4 West Old State Capitol Plaza
Springfield, Illinois 62701

Dear Mr. Harris:

This responds to your request for an opinion concerning the establishment of branches by trust companies. You have asked my opinion first on whether or not Attorney General Carlstrom's opinion of November 25, 1930, which advised that trust companies could establish branches within the municipality in which the trust company is domiciled, is still correct. In my opinion, it is. Your second question is whether the trust department of a bank may establish branches. In my opinion, it may not.

In 1930, a non-bank corporation acting as a fiduciary was governed by two acts, the General Corporation

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Act (Ill. Rev. Stat. 1929, ch. 32, par. 1) and the Trust Companies Act (Ill. Rev. Stat. 1929, ch. 32, par. 345 et seq.). The General Corporation Act set forth the basic requirements of incorporation. The Trust Companies Act provided that any entity lawfully incorporated under the General Corporation Act might qualify to do trust business. A similar relationship exists presently between the Business Corporation Act (Ill. Rev. Stat. 1977, ch. 32, par. 157.1 et seq.) and the Trust Companies Act (Ill. Rev. Stat. 1977, ch. 32, par. 287). The former sets forth the steps necessary for incorporation and the latter provides that a business corporation may qualify to act as a fiduciary.

In his opinion, Attorney General Carlstrom found that there was nothing in either Act that would prohibit a trust company organized under the General Corporation Act from establishing a branch office within the municipality in which its home office was located. Although both Acts have been modified since that time, the sections essential to the issue have not been materially altered. The 1930 opinion is based on sound legal ground and it is my opinion that a trust company may therefore have branch offices within the municipality in which it is located.

Your second question is whether the trust department of a bank has a right to establish a branch office.

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Banking corporations engaging in trust activities are subject to two statutes, the Illinois Banking Act (Ill. Rev. Stat. 1977, ch. 16 1/2, pars. 101 - 182) and the Trust Companies Act (Ill. Rev. Stat. 1977, ch. 32, par. 287). Under section 6 of the Illinois Banking Act (Ill. Rev. State. 1977, ch. 16 1/2, par. 106):

"No bank shall establish or maintain more than one banking house, or receive deposits or pay checks at any other place than such banking house, and no bank shall establish or maintain in this or any other state of the United States any branch bank, nor shall it establish or maintain in this State any branch office or additional office or agency for the purpose of conducting any of its business." (Emphasis added.)

A branch bank is defined in section 2 (Ill. Rev. Stat. 1977, ch. 16 1/2, par. 102) to include:

" * * * any branch bank, branch office or additional house, office, agency or place of business at which deposits are received or checks paid, or any of a bank's other business is conducted, but shall not include any place at which only records thereof are made, posted, or kept * * *." (Emphasis added.)

This raises the issue of what type of conduct is contained within the phrase "any activity". Applying the rule that statutes are to be read as a whole, the word "any" refers at least to those areas of activity specifically permitted in other sections of the Illinois Banking Act. Among the powers granted elsewhere is the capacity to accept and execute trusts. Thus even though accepting and executing

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trusts is not part of a general banking business (see, opinion No. S-1487, issued this date), if a bank engages in such a business, it is part of its other business and thus may not be conducted at a branch office.

The next issue presented by your second question arises out of the case of Continental Illinois Nat'l Bank & Trust Co. of Chicago v. Lignoul (No. 76 C 2209, N.D. Ill., filed Nov. 9, 1976). In Continental Bank, a Federal court determined that Continental, a national bank, could relocate its trust department. National banks are permitted to act as trustees when State law permits State banks, trust companies and other corporations in competition with national banks to so act. (12 U.S.C.A. § 92a.) The court determined that the relocation of an entire trust department was not prohibited, based upon its interpretation of the definition of "branch" as set forth in 12 U.S.C.A. § 36(f):

"The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

The court found that under the above definition, a relocation of an entire trust department was not prohibited since a trust department is not a place where "deposits are received, or checks paid, or money lent." I note that the Eighth Circuit Court of

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Appeals in St. Louis County Nat'l Bank v. Mercantile Trust Company Nat'l Ass'n (1976), 548 F. 2d 716) concluded that a trust business was included within the definition of branch and thus prohibited a national bank from branching its trust department when State banks could not.

Although the differences between the Federal and Illinois definitions of branch facilities limit the Continental decision from being applicable to the question of what activities may be conducted at a branch of an Illinois State bank, the case nevertheless raises another question with regard to branching. Under section 5(11) of the Illinois Banking Act (Ill. Rev. Stat. 1977, ch. 16 1/2, par. 105(11)), State banks are granted certain general corporate powers. Among them is the following:

"(11) Notwithstanding any other provisions of this Act, to do any act and to own, possess and carry as assets property of such character, including stock, which is at the time authorized or permitted to National Banks by an Act of Congress, but subject always to the same limitations and restrictions as are applicable to National Banks by the pertinent Federal law."

Thus the question raised is whether this provision would authorize State banks to branch their trust departments if national banks were allowed to. I am of the opinion it does not.

There is some ambiguity as to whether the provision authorizes State banks to own, possess and carry as assets property as authorized or permitted to national banks and

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also to do any other act national banks are authorized to do, or whether the provision only authorizes State banks to do acts and own, possess and carry as assets property as authorized or permitted to national banks. In other words, the issue is whether the phrase "to do any act" is limited to acts involving ownership, possession and carrying as assets property of such character, including stock, or is limited only to any act authorized or permitted to a national bank.

I think the more limited interpretation is correct. This provision was adopted by the General Assembly in 1961 (1961 Laws 2361) and ratified by the electors in 1962. It was put in its present form by Public Act 76-1826. Roland W. Blaha, the then Supervisor of State Banks, in Illinois Banker, September 1961, Vol. 43, No. 3, p. 11, stated without further discussion that:

" * * *

Section 5 is further amended by the addition of Paragraph (11). This paragraph is for the purpose of placing state banks on an equal basis with national banks in allowing investments in common stock of local small business corporations or any similar investment permitted in a national bank.

* * * "

There was no suggestion in the "Statement and Suggestions Prepared by the Secretary of State and Approved by the

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Attorney General of the State of Illinois", which was submitted to the voters for their consideration in determining how to vote at the referendum, that the provision was intended to do more than this. It simply stated:

" * * *

The proposed amendments also add a provision to Section 5 of the Illinois Banking Act which would authorize State banks to do any act and to own and carry as assets property of such character, including stock, as is authorized to National banks under Federal statutes.

* * * "

Furthermore, Illinois has a strong public policy against branching by banks. If this policy is to be changed, it should be done so explicitly by the General Assembly. Any ambiguity in section 5(11) should not now be interpreted to change this policy.

Therefore, I am of the opinion that State banks are not authorized to establish branches for their trust departments.

Very truly yours,

A T T O R N E Y G E N E R A L