

INTERPRETIVE LETTER NO. 2000-03 (May 9, 2000)

Bank may construct a building on property owned by the Bank and lease the building to the Post Office based on the authority of a federally insured thrift or certain out-of-state banks to engage in real property leasing. The Bank will be subject to any restrictions or limitations applicable to a federal thrift or out-of-state bank engaging in real property leasing. In addition, the Bank will need to seek approval from the FDIC.

This is in response to your inquiry concerning * ("Bank") proposed real estate transaction with the United States Post Office ("Post Office"). Under this proposal, Bank will construct a building on property which the Bank had purchased previously for future expansion. The building will then be leased to the Post Office under a long-term lease with an option to purchase after the completion of the construction, one year after completion and at five-year intervals thereafter.

The Illinois Banking Act ("Act") authorizes banks to own and lease personal property. 205 ILCS 5/5(14). Generally, a bank does not have the authority to engage in leasing real property. The Office of Banks and Real Estate ("Agency") has permitted banks to own and lease real property to municipalities using the national bank wildcard as the source of authority. See Interpretive Letter 99-01. However, a Post Office does not fit the definition of a municipality.

Section 5(25) of the Act authorizes an Illinois state chartered bank to offer any product or service that any federally insured thrift or out of state bank is authorized to offer under applicable law, subject to the same terms and conditions that apply to the thrift or out of state bank. 205 ILCS 5/5(25). The Agency has found provisions that authorize both federally insured thrifts and certain out of state banks to engage in real estate development, including the leasing of real property.

With respect to the authority of a federal thrift to lease real property, 12 CFR 559.4(e) provides that a thrift can engage in real estate related services through a service corporation, including leasing real property. If the Bank wishes to use the thrift wildcard to engage in the activity, it will have to comply with all of the restrictions applicable to a federal thrift engaging in the activity, including doing so through a service corporation. The Agency suggests that if the Bank wishes to use the thrift wildcard to engage in the activity, the Bank should contact the Office of Thrift Supervision to ensure that the Bank complies with all of the provisions a federal thrift would have to comply with when engaging in the activity.

With respect to the authority of out of state banks to engage in real property leasing, Maine and Virginia's statutes appear to authorize the activity. Title 9b, Section 419-A of the Maine Financial Code states that "in addition to real estate owned for offices and facilities pursuant to chapter 33, a financial institution may acquire all

property, real, personal and mixed, by mortgage, foreclosure, purchase or by any other means and may hold the property for investment purposes and may improve, develop, lease, contract, convey and otherwise exercise control over the property." Section 6.1-59.1 of the Virginia Banking Act states that in addition to the ownership of other real estate, a bank may invest in real estate "(I) for the purpose of producing income or for inventory and sale or (ii) for improvement, including the erection of buildings thereon, for sale or rental purposes. Said bank may hold, sell, lease, operate or otherwise exercise the right of an owner of such property." Either of these provisions appears to authorize a bank in the respective states to engage in the type of transaction Bank proposes with the Post Office. Please keep in mind, however, that if the Bank chooses to use either of these provisions as authority under which to engage in the lease with the Post Office, the Bank will be subject to any limits or restrictions, including investment limits, that would apply to a bank in Maine or Virginia engaging in such activity. The Agency suggests that if the Bank chooses to use Maine or Virginia's statutes as authority to engage in the activity, the Bank should contact the appropriate state banking department to ensure that the Bank complies with all of the provisions the Maine or Virginia bank would have to comply with when engaging in the activity.

The Agency also reminds you that because a national bank is not authorized to engage in leasing real property, Section 24 of the Federal Deposit Insurance Act requires the Bank to obtain permission from the Federal Deposit Insurance Corporation ("FDIC") prior to engaging in the activity. 12 USC1831a. Procedures to obtain this permission are described in 12 CFR 362.

Finally, the Agency requests that if the Bank does get FDIC approval and chooses to enter into a lease with the Post Office that the Bank provide the Agency with a copy of the lease. In addition, the Agency requests that the Bank furnish the Agency with a letter identifying the source of authority, that is the federal thrift, Maryland or Virginia provision, under which the Bank is engaging in the activity and any correspondence received from any other regulatory authority informing the Bank of any restrictions applying to the leasing of real property.