

INTERPRETIVE LETTER 86-1 (APRIL 10, 1986)

State bank may not invest in tax certificate on property in which bank has no security interest.

This letter is regarding a bank's investment in tax certificates issued on defaulted real estate.

You noted in your letter that the Illinois Banking Act ("the Act") enumerates the investments that a bank can make rather than those that are prohibited. The long standing rule with respect to bank powers is that a state bank has only those powers that are expressly granted by the Illinois Banking Act and those powers that are necessarily implied from the specific grant of power. Every power that is not specifically granted is withheld. State Bank of Blue Island v. Benzene, 48 N.E.2d 333 (1943).

Section 33 of the Act specifically authorizes state banks to purchase marketable investment securities. Marketable investment securities are defined as "marketable obligations evidencing indebtedness of any person in the form of bonds, notes or debentures...." The owner of real estate upon which a tax certificate has been issued has no obligation to pay the amount of money required to redeem the property. The bank holding the tax certificate has no right to sue the property owner for collection of the delinquent real estate taxes. Therefore, a tax certificate is not a promissory note or a bond representing the indebtedness of the owner of the forfeited property. As a result, tax certificates on defaulted real estate are not permissible investments under Section 33 of the Act.

I am enclosing a copy of a 1961 Attorney General's Opinion which supports this position.

[NOTE: Statements concerning bank powers are more accurately stated in the later case of Corbett v. Devon Bank, 12 Ill. App. 3d 350, 209 N.E. 2d 521 (1973).]