

## **INTERPRETIVE LETTER 89-5 (MARCH 29, 1989)**

### **State bank may purchase certificates of deposit and government securities as agent for its customers and charge a fee for this service as part of its general banking business.**

This is in response to your letter of \* regarding the ability of state banks in Illinois to deal in certificates of deposit ("CDs") and U.S. Treasury Bills, notes, bonds and certain other securities which are backed by the full faith and credit of the United States or a political subdivision (collectively referred to as "Government Securities").

As I understand the facts involved, \* ("Bank") purchases CDs of larger banks ("Issuing Banks") and Government Securities for Bank customers. Presently, the Bank receives no fee, commission or "interest spread" on CD purchases for Bank customers. The Bank would like to either receive a flat fee, a commission or realize an interest rate spread for its services without having the CD of the Issuing Bank be deemed to be a CD of the Bank. The following three questions were raised:

1. If the Bank were to receive a fee, commission or realize an interest rate spread from the Issuing Bank, would such an arrangement violate the provisions of the Illinois Banking Act (the "Act") (Ill. Rev. Stat. 1987, ch. 17, par. 301 et seq.);
2. Would the purchase of CDs from the issuing bank on behalf of Bank customers constitute an obligation or liability of the Bank; and
3. Would the Bank be in violation of the Act by realizing a spread or charging a fee or commission in connection with selling or purchasing of Government Securities on an agency basis for the benefit of its customers.

Powers of a state bank in Illinois are established and governed by the provisions of the Act. Section 3 of the Act authorizes the establishment of banks for the purpose of "doing a general banking business." Section 5 of the Act further enumerates the general corporate powers of a state bank. The leading case setting forth the standards to be utilized when a state bank in Illinois seeks to engage in an activity which is not expressly authorized in Section 5 but which may be considered the "doing of a general banking business" is Corbett v. Devon Bank et al., 12 Ill. App. 3d 559. In that case, the Illinois Appellate Court addressed the issue of whether Illinois state and national banks were authorized to distribute license plates and to profit from this service by charging a fee.

In determining whether a national bank was authorized to engage in this activity, the court looked to the construction of the wording of 12 U.S.C. 24, which grants to national banks "all such incidental powers as shall be necessary to carry on the business of banking...." In construing the term "incidental power" the court applied the reasoning of Arnold Tours Inc. v. William B. Camp, 472 F. 2d 427 (1972). Arnold Tours involved a

regulation issued by the Comptroller of the Currency permitting national banks to engage in the travel agency business. The Court of Appeals found that this regulation was beyond the power of the Comptroller and of national banks. In so finding the Court of Appeals held that:

a national bank's activity is authorized as an incidental power, 'necessary to carry on the business of banking', within the meaning of 12 U.S.C. 24, Seventh, if it is convenient or useful in connection with the performance of one of the bank's established activities pursuant to its express powers under the National Bank Act.

The court distinguished the facts of Devon Bank from those of Arnold Tours by stating that in "acting as a travel agent, a bank necessarily is obliged to enter a highly competitive business, completely unrelated to banking, for the purpose of making additional profits." In Devon Bank however, the court concluded that the banks involved were assisting in the performance of a public service, "a large part of which is intimately connected with the ordinary and traditional banking function of collecting and remitting funds for other parties." The court went on to find that the license plate service was akin to advertising, which was no more than an effort to increase goodwill and public acceptance and thus concluded that such a service was not beyond the statutory authority of a national bank.

When addressing the authority of a state bank to provide license plate services, the court noted that Section 3 of the Act authorizes the establishment of banks for the purpose of "doing a general banking business." Further, the court stated that the words "doing a general banking business...are to be used in their common and ordinary sense." People v. Wiersema State Bank, 36 Ill. 75, 88, N.E. 537, 543. The court, in finding that it would be logical from the "analysis regarding national banks that the same result should follow concerning state banks," held that since the license plate services are germane to the carrying on of a general banking business, such activities are not beyond the statutory authority of a state bank.

In connection with the specific questions raised regarding the purchase of CDs and Government Securities on an agency basis for a Bank customer, this Agency would consider such a service similar to the license plate service discussed in Devon Bank in that it is directly connected with the traditional banking function of collecting and remitting funds for other parties. Therefore, the proposed transactions involving the purchase of CDs and Government Securities for bank customers is within a bank's general banking business under state law. Further, I do not believe that under state law the purchase of CDs from another bank would constitute an obligation of the purchasing bank so long as the Bank's records properly reflect that the Bank is acquiring the CDs as agent for its Bank customers.