

INTERPRETIVE LETTER 89-7 (JUNE 18, 1989)

State bank may provide limited financial advisory services to unaffiliated parties in connection with mergers and acquisitions as part of its general banking business.

* is seeking to offer merger and acquisition services to assist customers in buying and selling their businesses. The Bank will provide advice as to the marketability and value of a business; act as an intermediary to bring together sellers with interested buyers; assist the parties in negotiating a transaction; and provide advice on methods to finance the transaction. You have inquired whether these activities are permissible under the Illinois Banking Act (the "Act").

Section 3 of the Act authorizes state banks to conduct "a general banking business." A state bank's power to do a general banking business includes the power to engage in activities which are incidental and germane to carrying on a general banking business. Corbett v. Devon Bank, 229 N.E. 2d 521, 529 (1973). An activity is considered incidental to the business of banking if it is convenient or useful in connection with the performance of one of the bank's express powers. Id. With the exception of providing assistance in negotiating transactions, the activities described above are viewed by this Agency as being directly related to the development and analysis of financial data which is certainly convenient and useful in connection with a bank's express power to loan money. The financial advisory services on merger and acquisitions involve consideration of the same information a bank reviews in the application process for a loan, and thus are viewed as incidental powers.

The Board of Governors of the Federal Reserve System has determined by Order that financial advisory services in connection with mergers or acquisitions for non-affiliated financial and non-financial institutions is closely related to banking and thus a permissible activity for subsidiaries of bank holding companies. In addition, the Office of the Comptroller of the Currency ("OCC") has authorized national banks to provide merger and acquisition services. 12 C.F.R. 7.7200. However, the OCC does not allow national banks to take part in the negotiations other than the initial introduction of the parties. The Commissioner agrees with the position of the OCC with respect to a bank's role in the negotiation process. A bank's active participation in the negotiation process could lead to a conflict of interest. The interests of a buyer and seller in a merger or acquisition transaction are different and as a result, it is not possible for the bank to represent the interests of both sides adequately and fairly.