

INTERPRETIVE LETTER 89-14 (NOVEMBER 3, 1989)

Business loan from state bank to spouse of state bank examiner secured by mortgage on couple's principal residence is not a loan or gratuity to bank examiner.

Your letter to *, dated *, has been referred to me for response. In it you sought the advice of this Agency on whether it would be permissible for one of this Agency's examiners [Examiner] to sign a mortgage or a hypothecation agreement pertaining to real estate to be used as collateral on a loan from * (hereafter "Bank") to [Examiner's spouse].

The facts of this situation as I understand them are as follows. [Examiner's spouse] is a general partner in a * partnership with *. [Examiner] has no ownership or other interest in that partnership. [Examiner's spouse] has applied to the Bank for a business loan. [Examiner] would not sign the note nor would the Bank be looking to [Examiner] for repayment of the note. The proceeds of the loan are to be used for the partnership's business; [Examiner] is to receive none of the proceeds nor any other benefit as a result of the loan. The Bank expects that a credit life insurance policy will be purchased in conjunction with the loan. The loan is to involve a mortgage on certain real estate as collateral. [Examiner] has an interest in that real estate. The Bank would request that [Examiner] either sign the mortgage or hypothecate [Examiner's] interest in the real estate to the Bank to address the situations of divorce or death if such occurred during the loan repayment period.

Section 40 of the Illinois Banking Act (hereafter "Act") (Ill. Rev. Stat. 1987, ch. 17, par. 350) states the following:

No state Bank and no officer, director or employee thereof shall make any loan or grant any gratuity to any Bank examiner appointed under the provisions of this Act. Any state bank officer, director, or employee violating this provision shall be deemed guilty of a Class A misdemeanor.

Section 40 has two prohibitions. The first prohibition is that state banks and their agents may not extend loans to bank examiners of this Agency. The second prohibition is that state banks and their agents may not grant any gratuities to this Agency's bank examiners.

Neither [Examiner's] signature on the aforementioned mortgage nor [Examiner's] hypothecation of [Examiner's] interest in the real estate to the Bank would violate Section 40 of the Act as interpreted by this Agency. The situation described previously would not involve an extension of a loan from the Bank to [Examiner]. Nor do the facts evidence that the Bank or its agents would grant [Examiner] any gratuities as a result of the loan to [Examiner's spouse]. [Examiner] would neither sign the note, in any manner, nor guarantee the note. [Examiner] would have no ownership or other interest in the * partnership. [Examiner] also would receive none of the proceeds of the loan.

This Agency would have no objection to a loan from the Bank to * under the above-stated facts. This Agency reserves the right to withdraw its "no objection" position in the event the loan transaction is materially different from the above-stated facts.