

INTERPRETIVE LETTER 90-25 (DECEMBER 14, 1990)

State bank may invest in joint venture to expand industrial park as a project that promotes development of the community and its welfare.

This letter is to confirm the position of the Illinois Commissioner of Banks and Trust Companies ("Commissioner's Office") as to the ability of the Bank to invest \$80,000 into the expansion of the * Industrial Park in *, Illinois. Specifically, I will explain the rationale underlying the Bank's ability to provide funds for the industrial park's expansion under the authority of Section 5(21) of the Illinois Banking Act ("Act") (Ill. Rev. Stat. 1989, ch. 17, par. 311(21)).

The focal point in Section 5(21) is the authority for state banks to make [debt or] equity investments in "projects" designed to promote the development of the community and its welfare. Since subsection (21) was only recently introduced into the Act, the Commissioner's Office has not yet formally defined what the term "project" encompasses. However, the Office of the Comptroller of the Currency ("OCC"), the federal regulator of national banks, has provided insight on this subject pertaining to community development. In Banking Circular 185 (Rev.) ("Circular 185"), the OCC referred to joint ventures as being acceptable community development projects.

A joint venture, as an association of persons participating in a commercial enterprise, involves (1) a community of interest in a common purpose, (2) a proprietary interest in a subject matter, (3) a right to direct and govern the activity's policy and (4) a sharing in the activity's profits and losses. Russell v. Klein, 33 Ill. App. 3d 1005, 1007 (1st Dis., 1975). In this case, the Bank has associated itself with the * Industrial Development Commission ("Commission") in order to jointly provide the resources needed to expand the industrial park in *. The expansion of the industrial park enhances the opportunity for commercial and economic growth in *. The Bank and the Commission share an interest in expanding the industrial park for the betterment of *. The Bank and the Commission plan to invest substantial amounts of money into the industrial park expansion which would evidence an ownership interest by each. Additionally, a written draft on an expansion agreement between the Bank and Commission provides for sharing in ordinary income and capital gains.

The Commissioner's Office takes the position that the planned industrial park expansion would constitute a joint venture under Illinois law. It is appropriate to treat that joint venture as a "project," for purposes of Section 5(21) of the Act, similar to the treatment afforded joint ventures by the OCC per Circular 185. Therefore, the Bank may invest in the industrial park expansion under the authority of Section 5(21). This interpretation is based upon the facts presented to the Commissioner's Office, which reserves the right to review its position if the facts actually are materially different than as presented.

[NOTE: Section 24 of the Federal Deposit Insurance Act, 12 U.S.C. 1831a, effective December 19, 1991, and regulations implementing Section 24, 12 C.F.R. Part 362,

limit the authority of state banks to invest in qualified housing projects to an aggregate of 2% of total assets. 12 C.F.R. 362.3.]