

INTERPRETIVE LETTER 91-16 (JULY 12, 1991)

State banks may indemnify officers, directors, employees and agents to same extent that corporations are so authorized; provided, however, state banks may not indemnify directors and officers for those acts for which the Illinois Banking Act imposes personal liability. [Note: Amendment to Section 39 in 1994 provides some protection against liability for directors by amendment to bank's charter.]

Last month you inquired about indemnification as it pertained to Illinois state banks. Specifically, you asked whether Illinois state banks could use the indemnification provisions of the Business Corporation Act of 1983 ("Act") (Ill. Rev. Stat. 1989, ch. 32, par. 8.75) for the benefit of bank directors, officers, employees, and agents.

The Illinois Banking Act ("Banking Act") (Ill. Rev. Stat. 1989, ch. 17, par. 301 et seq.) provides Illinois state banks with the authority to indemnify their directors, officers, employees and agents to the same extent that corporations are so authorized by Section 8.75 of the Act. See Section 5(19) of the Banking Act, Ill. Rev. Stat. 1989, ch. 17, par. 311(19). Therefore, Illinois state banks may provide indemnification to the extent authorized for corporations under the Act. The Commissioner of Banks and Trust Companies has promulgated no rules pertaining to indemnification of directors, officers, employees and agents.

[Indemnification document] that you sent me conflicts with the provisions of Section 39 of the Banking Act, Ill. Rev. Stat. 1989, ch. 17, par. 349. Section 39 imposes personal liability upon bank directors and officers who violate, participate in a violation, assent to a violation or permit any of a bank's officers, agents or servant to violate Sections 32, 33, 34, 35.1 or 35.2 of the Banking Act. Section 39 does not provide for degrees of exculpation from personal liability due to good-faith exercises of prudent care and skill, reliance upon bank counsel advice or reliance upon information provided by bank directors, officers or employees. Therefore, the provisions of [indemnification document], as applied to Illinois state banks, would contrary to state banking law.