

INTERPRETIVE LETTER 91-27 (OCTOBER 28, 1991)

State bank may transfer ORE to its bank holding company as a dividend in order to comply with divestiture rules.

*, District Supervisor, and I have had conversations with you pertaining to a certain * property which has been in the nature of other real estate ("ORE") with the * Bank since *. You asked the Commissioner of Banks and Trust Companies ("Commissioner's Office") to approve * Bank's transfer of * property to * Bancorp as a dividend. This is being considered in order to comply with the ownership restrictions of Section 5(9) of the Illinois Banking Act ("Act") regarding the holding of ORE. * Bank would like to charge off \$* from the value of * property and dividend the residual \$* to * Bancorp.

The provisions of the Act, when read together, authorize a state bank to dividend ORE to its shareholders as a means of properly disposing of the property. The Act clearly does not authorize a bank to participate in the real estate business, as it requires a bank pursuant to Section 5(9) to dispose of ORE generally within five years of acquisition. The Act, however, does not prescribe a particular manner in which the ORE is to be disposed, thus leaving the disposition to the discretion of the bank. The Act also authorizes a state bank to pay dividends, pursuant to Section 14(8), to the extent it has net profits. Again, the Act does not specify in what form the dividends may be paid, therefore leaving the type of dividend payment to the discretion of the bank. Finally, the Act does not require the approval of the Commissioner's Office in order for a bank to pay a dividend.

* Bank has the authority under the Act to dividend * property to * Bancorp for the purpose of satisfying the ownership restrictions of Section 5(9). With respect to * Bank's intent to charge off \$* from the value of * property and dividend the residue to * Bancorp, I direct your attention to Policy Statement 4.02 promulgated by the Commissioner's Office, a copy of which is enclosed. The Statement discourages charge-offs of sound assets whether partial or total. The Statement would only condone charge-offs of amounts in excess of the fair value of a particular asset. Consequently, Policy Statement 4.02 would encourage * State Bank to dividend the fair value of * property to * Bancorp.