

INTERPRETIVE LETTER 91-33 (DECEMBER 11, 1991)

State bank that is owned by foreign corporation may purchase a residence for use by bank personnel temporarily assigned to Illinois.

I am writing in response to your request for an opinion on whether a foreign-owned state bank may purchase a home for use by bank officers transferred to Illinois on a temporary basis.

Section 5(8) of the Illinois Banking Act ("Act"), Ill. Rev. Stat. ch. 17, par. 311(8) (1989), authorizes a state bank to own real estate for the purpose of conducting its banking business. This provision has generally been interpreted to be limited to those locations necessary for operating the bank's main office, branches and back-room operations. However, this Agency is of the opinion that in the case of a state bank owned by a foreign corporation, the ownership of a home for use by transferred bank officers is incidental and germane to the bank's authority to own real estate for the transaction of its banking business.

It has long been recognized by Illinois courts that state banks have the authority not only to exercise those powers listed in Section 5 of the Act, but also those powers that are "incidental and germane to the carrying on of a general banking business." Corbett v. Devon Bank, 12 Ill. App. 3d 350, 209 N.E. 2d 521 (1973). In the case of a state bank owned by a foreign corporation, it is common practice to transfer officers from the foreign country to Illinois to supervise the operations of the state bank. Such officers typically work in Illinois on a temporary basis, usually for a period of two to three years. We believe that under these circumstances, it would be economically impractical for a continuous succession of officers to purchase homes in Illinois; due to fluctuations in interest rates and property values, each transferee would face a risk of loss upon the eventual sale of his home. Thus, it is the opinion of this Agency that in the case of a foreign-owned state bank, the ownership of a home for use by transferred bank officers is authorized under Section 5(8) of the Act.

We note that the Office of the Comptroller of the Currency ("OCC") has authorized national banks to purchase residences for foreign branch officers living abroad. Fed. Banking L. Rep. (CCH) &85,427. The OCC has determined that bank ownership of a residence under these circumstances is a legitimate aspect of a program for the development and efficient use of bank personnel. We agree with this rationale and believe that it applies with equal force to foreign-owned state banks.

[NOTE: This interpretation also applies to foreign banks licensed under the Foreign Banking Office Act.]