

INTERPRETIVE LETTER 91-35 (DECEMBER 23, 1991)

Trust department of state bank and its officers may act under a power of attorney that encompasses property and financial matters.

Previously you asked if a bank could be named a power of attorney on behalf of an individual and whether it was acceptable and proper for a bank officer to also act in that capacity. During a follow-up telephone conversation, you stated that the power of attorney would encompass property and financial matters.

Pursuant to Section 3 of the Illinois Banking Act, Ill. Rev. Stat. ch. 17, par. 309 (1989), Sections 2-1(a) and 2-4 of the Corporate Fiduciary Act, Ill. Rev. Stat. ch. 17, pars. 1552-1(a) and 1552-4 (1989), and Rule 320 promulgated by the Commissioner of Banks and Trust Companies ("Commissioner's Office"), Ill. Admin. Code tit. 38, Sec. 320.10 et seq. (1991), a state bank, which has procured a certificate of authority from the Commissioner's Office to accept and execute trusts is authorized generally to act as an attorney in fact under a power of attorney on behalf of an individual pertaining to property and financial matters. Only trust department personnel should conduct transactions pursuant to a power of attorney. The transaction of affairs by a state bank under a power of attorney is incidental and germane to its conducting a general banking business. The nature of functions that would be performed by trust departments would be analogous to those currently performed as corporate fiduciaries. State banks, though, are prohibited, under Section 13 of the Consumer Installment Loan Act, Ill. Rev. Stat. ch. 17, par. 5413 (1989), from taking a power of attorney when contracting for or receiving charges on loans regulated by that Act except to acknowledge the execution of an instrument or to confess judgment.

A bank officer is also permitted to act as an attorney in fact under a power of attorney. Section 16(7) of the Illinois Banking Act, Ill. Rev. Stat. ch. 17, par. 323(7) (1989), authorizes bank officers to carry on the business of their respective banks. To the extent that the trust department of a state bank is authorized to act as an attorney in fact, its officers may represent the bank in performing the bank's respective duties under the power of attorney. Additionally, a bank officer may, in his or her individual capacity, act as an agent under a power of attorney pursuant to the Durable Power of Attorney Law, Ill. Rev. Stat. ch. 1002, par. 802-1 et seq. (1989).