

INTERPRETIVE LETTER 93-027 (DECEMBER 15, 1993)

State bank may own and lease real property and personal property to a municipality, subject to the same restrictions applicable to a national bank.

We are writing in response to your written request that the Illinois Commissioner of Banks and Trust Companies ("Commissioner") determine whether an Illinois state bank may lease personal property and may purchase, construct or otherwise own real estate for the purpose of leasing the property to a municipality. As discussed below, we conclude that a state bank may purchase or finance the construction of and hold title to a municipal building and lease the same to a municipality or other public authority, including any personal property associated with the building.

You have informed us that the City of *, Illinois, may request that the * ("Bank") purchase or construct a municipal building and then lease the building to the City. Also, the FDIC has informed you that this activity is acceptable and is included on the FDIC's list of Activities Permissible for National Banks and Their Subsidiaries.

National banks are expressly permitted to purchase or construct a municipal building, such as a school building or other similar public facility, and as holder of legal title, to lease the same to a municipality or other public authority having resources sufficient to make payments of all rentals as they become due. Such a lease agreement must provide that upon its expiration, the lessee will become the owner of the public building or facility. 12 C.F.R. 7.3300 - Leasing of Public Facilities. In those cases where a national bank leases real property to a municipality or public authority, the Office of the Comptroller of the Currency ("Comptroller"), the primary federal regulator of national banks, requires its examiners to determine that:

1. The lessee has resources sufficient to make payments on all rentals as they become due. Sufficient resources may be demonstrated by general taxing ability;
2. The lease agreement provides that, upon expiration, the lessee will become title holder of the property;
3. The financing arrangement meets the requirements of 12 U.S.C. Section 84 (Lending Limits); and
4. The financing arrangement meets the requirements of 12 U.S.C. Section 371 (Real Estate Loans).

Comptroller's Handbook for National Bank Examiners - Section 208.3(14)(a).

Illinois state banks are generally authorized by Section 5(11) of the Illinois Banking Act ("Act"), 205 ILCS 5/5(11) (1992) [Ill. Rev. Stat. ch. 17, par. 311(11)], to do any act that a national bank is authorized to do. Specifically, Section 5(11) states:

A bank organized under this Act...shall...have all

the powers conferred by this Act and the following additional general corporate powers:

(11) Notwithstanding any other provisions of this Act, to do any act and to own, possess, and carry as assets property of the character, including stock, which is at the time authorized or permitted to national banks by an Act of Congress, but subject always to the same limitations and restrictions as are applicable to national banks by the pertinent federal law.

Pursuant to Section 5(11), we conclude that because national banks may lease real property to a municipality, an Illinois state bank may conduct the same activity subject to the same limitations that apply to a national bank. Those limitations require that Bank must determine that the municipality has sufficient resources to make payments of all rentals when they become due, the lease agreement must provide that upon its expiration the municipality will become owner of the building, and the lease agreement is subject to the lending limits contained in Section 32 of the Act.

If the lease is a "general obligation" of the municipality, there will be no limit as to the Bank's investment, because Section 35(4) of the Act states:

The limitations in Section 32...upon the liabilities of any one person...shall not apply to the following as to which there shall be no limitation:

(4) General obligations and tax anticipation warrants of each state of the United States and general obligations of each municipality located in whole or in part in the county in which the bank is located.

"General obligation" is defined in Section 2 of the Act as:

...a bond, note, debenture, security or other instrument evidencing an obligation of the issuer that is supported by the full available resources

of the issuer, the principal and interest of which is payable in whole or in part by taxation.

In addition, Section 3 of the Local Government Debt Reform Act ("Debt Reform Act"), 30 ILCS 350/3, [Ill. Rev. Stat. ch. 17, par. 6903], defines a "general obligation bond" as:

...bonds of a governmental unit for the payment of which the governmental unit is empowered to levy ad valorem property taxes upon all taxable property in a governmental unit without limitation as to rate or amount.

Section 3 of the Debt Reform Act also defines a "bond" as:

...any instrument evidencing the obligation to pay money authorized or issued by or on behalf of a governmental unit under applicable law, including without limitation, bonds, notes, installment or financing contracts, leases, certificates, tax anticipation warrants or notes, vouchers and other evidences of indebtedness. (emphasis added)

If, however, the lease does not qualify as a general obligation, Bank's investment in the property is limited to 20% of Bank's unimpaired capital and surplus.

Illinois state banks are specifically authorized under the Act to own and lease personal property. Section 5(14) states:

A bank organized under this Act...shall...have all

the powers conferred by this Act and the following additional general corporate powers:

(14) To own and lease personal property acquired by the bank at the request of a prospective lessee and upon the agreement of that person to lease the personal property provided that the lease, the agreement with respect thereto, and the amount of the investment of the bank in the property comply with Section 35.1 of this Act.

Section 35.1(a) limits a Bank's unamortized investment in personal property subject to a lease, plus any existing indebtedness of the lessee for money borrowed from Bank, to a total of 20% of Bank's unimpaired capital and unimpaired surplus. "Unamortized investment" refers to Bank's purchase price of the personal property to be leased less the amounts already remitted by the lessee under the lease. Also, the lease may not obligate Bank to maintain, repair or service personal property.