

INTERPRETIVE LETTER 93-007.1 (JULY 2, 1993)

State bank is authorized to acquire real estate to swap for property to be used as bank premises.

This is in reply to your letter dated *, regarding the acquisition of certain real estate by * ("Bank"). The Bank intends to relocate its main banking house from the current location at * in * to a new location in * ("Premises Property"). In order to acquire the Premises Property from its current owners, * ("Sellers"), the Bank will have to acquire and convey to the Sellers a parcel of real estate located in * ("Swap Property"). Bank is seeking confirmation from this Agency that it is authorized to purchase the Swap Property as part of the series of transactions that will allow Bank to acquire the Premises Property. For the reasons set forth below, this Agency finds that Bank is authorized to acquire the Swap Property under the circumstances described in your letter.

Section 5(8) of the Illinois Banking Act ("the Act"), 205 ILCS 5/5(8) (1992) [Ill. Rev. Stat. ch. 17, par. 311(8)], authorizes a state-chartered bank to "own, possess, and carry as assets all or part of the real estate necessary in or with which to do its banking business." The only other authority in the Act for the acquisition of real estate involves "other real estate" acquired in collection of a borrower's debt ("ORE"). Illinois banks lack the authority to acquire real estate for speculative investment purposes or for purposes unrelated to the banking business. The issue raised by your inquiry is whether or not Bank's acquisition of the Swap Property is authorized by Section 5(8) of the Act.

The proposal that Bank acquire the Swap Property and exchange it for the Premises Property was initiated by the Sellers. The Swap Property is, in effect, the purchase price that the Sellers are demanding for the Premises Property. Bank has no apparent interest in the Swap Property except as it relates to the ultimate objective of acquiring the Premises Property as Bank's future location. Under these circumstances, it is the conclusion of this Agency that the acquisition of the Swap Property should be treated as one phase in the continuous process by which Bank would acquire the Premises Property from the Sellers. Clearly, the acquisition of the Premises Property is authorized by Section 5(8), as the Premises Property will become the location at which Bank operates its main banking house. The acquisition of the Swap Property by Bank, required by the Sellers as a condition precedent to Bank's acquisition of the Premises Property from the Sellers, is therefore similarly authorized by Section 5(8) since it is being undertaken in relation to Bank's efforts to acquire its new banking premises.

The Office of the Comptroller of the Currency ("OCC"), the primary regulator of national banks, has authorized real estate swaps involving ORE. OCC Interpretive Letter No. 349 (September 12, 1985), Fed. Banking L. Rep. (CCH) par. 85,519. Although the OCC's

Interpretive Letter No. 349 addressed a fact situation somewhat different than Bank's situation, the critical factors in the OCC's decision were the connection between the real

estate swap and a legitimate banking objective and the fact that the national bank had no speculative motive in the transaction. Those factors are equally relevant here.