

INTERPRETIVE LETTER 94-004 (MARCH 23, 1994)

State bank that assists residents of senior citizens centers and nursing homes on a limited basis is not establishing branches; state bank is authorized to purchase guaranty bonds to secure excess deposits.

Your letter to * has been referred to me for response. In your letter you asked whether the *, Illinois ("Bank"), may assist senior citizens with banking matters and whether Bank may purchase a guaranty or surety bond to protect customers' deposits over \$100,000. For the reasons outlined below, we conclude that the Bank may provide both services.

1. Senior Citizens Banking Assistance

Section 44.1 of the Illinois Banking Act ("Act"), 205 ILCS 5/44.1 (1992), authorizes state banks to provide banking services to residents of a nursing home, senior citizens retirement home, or long-term care facility. According to Section 44.1, a state bank will not be deemed to have established a branch at such a location if the bank provides its services on a limited basis. You stated in your letter that Bank would send a representative once a week to "assist with banking and help with other questions regarding finances." Assisting residents of the senior citizens center and nursing home with banking appears to qualify as the type of service contemplated by Section 44.1. This service also would be provided on a "limited basis" since Bank would not be establishing a permanent presence at the senior citizens center and nursing home. Whether the "help with other questions regarding finances" is covered by Section 44.1 depends on whether the "help" is the type of service Bank is authorized to and does perform at the bank premises. If it is, then Bank could provide the service at the senior citizens center and nursing home. We therefore conclude that Section 44.1 of the Act authorizes Bank to provide the proposed services at the new senior citizens center and nursing home, subject to the above analysis.

2. Excess Deposit Insurance

According to your letter and our follow-up telephone conversation, Bank also would like to purchase a guaranty bond to protect customer deposits that exceed the amount insured by the Federal Deposit Insurance Corporation ("FDIC"). Bank expects to use the guaranty bond as a promotional tool to increase its deposits. Bank intends to purchase the bond in the form of a bank deposit guaranty bond issued by * ("Surety Company"). According to a promotional flyer prepared by Surety Company, a bank deposit guaranty bond would guarantee that if the bank failed, a protected customer would receive the amount of the customer's deposits in excess of the FDIC insured amount up to the amount of the bond issued to the particular customer. Bank would determine which customer deposits would be insured by the bonds and what the insured amounts would be. The bonds may be applied to individual, partnership, and corporate deposits and may guarantee several deposits of the same customer simultaneously. Surety Company's

promotional flyer states that a well capitalized and managed bank could purchase bonds for all of the deposits that the bank intends to insure up to an aggregate of ten million dollars. You also asked whether Bank is authorized to pay the annual premiums on the guaranty bonds.

We take notice of a staff interpretive letter issued by the Office of the Comptroller of the Currency ("OCC"), OCC Interpretive Letter No. 323, [1985-87 Transfer Binder] Fed. Banking L. Rep. (CCH) par. 85493 (January 8, 1985). The letter addressed a national bank's purchase of a surety bond from an insurance company to guarantee the amounts of private deposits in excess of the FDIC's coverage. The OCC analysis focused on two issues.

First, the OCC determined that the purchase of the surety bond did not constitute the pledging of the bank's own assets to secure the excess deposits, and therefore there was no risk that one depositor would be preferred over other depositors in case the bank failed. Second, the OCC concluded that the purchase of the surety bond was an incidental power of a national bank that supported the bank's ability to attract deposits. Consequently, the OCC did not object to the national bank's purchase of the surety bond. A copy of Interpretive Letter No. 323 is enclosed for your reference.

Following a similar process of analysis, we arrive at the same conclusion as did the OCC. First, Section 5(7)(a) of the Act authorizes a state bank to pledge its assets "to secure its...nondeposit obligations." 205 ILCS 5/5(7)(a)(1992). Second, a state bank's purchase of a guaranty bond to attract new and larger deposit accounts is similar to, and has the same effect as, money spent on other forms of marketing. Finally, we also conclude that a state bank's expenditure of money on premiums for deposit guaranty bonds to attract new and larger accounts is incidental to conducting a general banking business as authorized by Section 3 of the Act, 205 ILCS 5/3 (1992). Therefore, we conclude that the Illinois Banking Act authorizes Bank to purchase the bank deposit guaranty bonds for customer deposits that exceed the FDIC insured amount.

State banks should be aware that companies offering deposit guaranty or surety bonds must obtain a license from the Illinois Department of Insurance to qualify to conduct business with state banks in Illinois.