

INTERPRETIVE LETTER 94-017 (SEPTEMBER 1, 1994)

State bank that acts as a bond registrar is conducting business as a fiduciary and must have a certificate of authority to accept and execute trusts.

We are in receipt of your letter in which you asked whether State Bank of *, Illinois ("Bank"), is required by Illinois state law to have trust powers to act as a bond registrar for the sale of park district bonds. We are of the opinion that Bank's conduct as a bond registrar constitutes the exercise of a fiduciary activity, and therefore Bank is required to obtain a certificate of authority to act as a bond registrar.

According to the documents that you enclosed with your letter, the Commissioners of the * Park District, * County, Illinois ("Park District") on *, adopted an ordinance for the issuance of general obligation park bonds ("Bonds") to obtain \$* in funds for building, maintenance, and improvement costs of facilities belonging to Park District. The ordinance provides that Bank will act as the bond registrar with respect to the issuance of the Bonds. As bond registrar, Bank has the responsibility to duly execute certificates of authentication on each bond that is issued. Park District's books for the registration and transfer of the Bonds are to be kept and maintained at Bank's office. Additionally, Bank also keeps multiple bond blanks in its custody for use in the transfer and exchange of the Bonds. In the event that an owner should decide to sell some or all of his or her Bonds, Bank will receive the duly executed Bonds from the transferor for cancellation and then authenticate, date, and deliver new Bonds to the transferee(s). According to Section 17 of the ordinance, Bank's further duties as bond registrar include:

- 1) Maintaining a list of the holders of the Bonds;
- 2) Annually presenting Park District with a certificate pertaining to
Bonds that were cancelled and destroyed; and
- 3) Annually presenting Park District with an audit confirmation of Bonds
that were paid and were outstanding and interest payments on the Bonds.

Park District agreed to pay Bank \$* per year for ten years for Bank's services as registrar.

The issue for our consideration is whether the Bank's activities as a bond registrar constitute the exercise of a fiduciary activity. If it does, then the Corporate Fiduciary Act ("CFA"), 205 ILCS 620/1-1 to 9-5 (1992), requires Bank to obtain a certificate of authority from the Commissioner of Banks and Trust Companies ("Commissioner").

A bond registrar serves the important duty of guarding against over issuance. FDIC Trust Examination Manual, Section VI--Account Administration: Corporate Trust Accounts,

Subsection D. The registrar must maintain accurate records of the number of Bonds outstanding and authenticate all Bonds that are issued. The ordinance provides several significant functions that the Bank must perform.

The Comptroller of the Currency ("Comptroller"), the primary federal regulator of national banks, has determined that acting as a bond registrar is a fiduciary activity. Under Title 12 of the United States Code, the Comptroller has the following authority:

to grant by special permit to national banks applying therefore...the right to act as...registrar of stocks and bonds...or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

12 U.S.C. Section 92a(a)(emphasis added).

In connection with Section 92a, the Comptroller issued Part 9 of Title 12 of the Code of Federal Regulations entitled "Fiduciary Powers of National Banks and Collective Investment Funds." In Part 9, the Comptroller defined the terms "fiduciary" and "fiduciary powers" as follows:

"Fiduciary" means a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes...registrar of stocks and bonds...and any other similar capacity.

12 C.F.R. Section 9.1(b)(emphasis added); and

"Fiduciary powers" means the power to act in any fiduciary capacity authorized by the Act of September 28, 1962, 76 Stat. 668, 12 U.S.C. 92a.

Under that Act, a national bank may be authorized to act...as...registrar of stocks and bonds...or in any other fiduciary capacity which State banks, trust companies, or other corporations which come into competition with the national bank may exercise under local law.

12 C.F.R. Section 9.1(c)(emphasis added).

It is clear that under federal law and Part 9 of the Comptroller's regulations, a national bank's conduct as a bond registrar constitutes acting in a fiduciary capacity. To act in that fiduciary capacity, the national bank must apply to the Comptroller for a special permit; it is not an activity that is permitted as part of a general banking business under a regular bank charter.

We are of the opinion that a state bank that acts as a bond registrar is conducting fiduciary activities. In order to conduct fiduciary activities, such as acting as a bond

registrar, Bank is required by the CFA to apply to the Commissioner for a certificate of authority. Such certificate may be limited to reflect the limited nature of the fiduciary activities.