

(717) 783-8240

June 30, 1999

Dear

This responds to your letter in which you seek clarification from the Pennsylvania Department of Banking (the "Department") regarding two items in the Department's letter to you permitting Pennsylvania State Bank (the "Bank"), a Pennsylvania state-chartered bank, to offer employee benefit and compensation advisory services through a proposed Bank subsidiary, namely, the Pennsylvania State Bank Service Corporation (the "Service Corporation"). This letter modifies the Department's approval letter dated May 25, 1999, regarding the Bank's request to engage in employee benefit and compensation advisory services through the Service Corporation. Therefore, the Department's May 25, 1999 letter remains valid except to the extent modified herein.

The Department acknowledges and agrees that the Bank received permission to establish the Service Corporation pursuant to a letter addressed to [redacted], dated April 30, 1997. Therefore, please be advised that the Department's letter dated May 25, 1999, constitutes approval to expand the activities of the Service Corporation to include the proposed employee benefit and compensation advisory services set forth in your April 29, 1999 letter to the Department, subject to the terms and conditions contained in the Department's letter approving establishment of the Service Corporation and as further modified herein.

Furthermore, you seek clarification of the statement contained in the Department's prior approval letter dated May 25, 1999 which states that:

. . . the employee benefit and compensation advisory services offered by the Service Corporation to its small business customers is permissible provided that the offering of human resource consulting services constitutes no more than 10% of the total package of employment benefit and compensation advisory services offered as a whole to small business customers. (Footnote omitted)

For purposes of clarifying this statement, it was the Department's intent to convey that the offering of human resource consulting services is permissible provided that the human resource consulting services constitute no more than 10% of the cost of the package of employment benefit and

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compensation advisory services offered as a whole to *each* small business customer. However, in a conversation with the Office of the Comptroller of the Currency's ("OCC") Office of the Chief Counsel, it was indicated to the Department that the 10% threshold is not a definitive limitation. Rather, the 10% limitation on human resource consulting services was proposed to the OCC by an applicant national bank as part of its employee benefit and compensation advisory program and was deemed acceptable by the OCC because the proposed amount posed a sufficiently minor safety and soundness risk to the national bank. Therefore, it is the Department's position that the Bank, through the Service Corporation, may offer human resource consulting services in addition to the employee benefit and compensation advisory services offered to its small business customers provided that the offering of human resource consulting services poses not more than a minor safety and soundness risk to the Bank.

Also, the OCC representative indicated that the offering of human resource consulting services is an excess capacity activity, meaning that the offering of human resource consulting services may only be performed by a person using their excess time capacity that was initially acquired in good faith but cannot be utilized by the national bank. The OCC has stated that "[t]he excess capacity doctrine recognizes that a bank acquiring an asset in good faith to conduct its banking business should, under its incidental powers, be permitted to make full economic use of the acquired property if use of the property for purely banking purposes would leave the property underutilized . . . [t]he underlying rationale is essentially that of avoidance of economic waste." OCC Interpretive Letter No. 811 (CCH ¶ 81-259, Dec. 12, 1997). The OCC indicated that with regard to human resource consulting services, a national bank that hired a human resource consultant initially for internal bank purposes exclusively in good faith could use that person's excess time capacity to provide the same services to small business customers so as not to commit economic waste. Thus, it is the Department's position that the Bank or the Service Corporation could hire a qualified person to perform human resource consulting services initially for internal Bank purposes exclusively in good faith if that person would be primarily involved in providing such services to the Bank. In addition, the person could use their excess time capacity to provide these services to small business customers of the Bank through the Service Corporation. However, the person cannot be hired by the Bank or the Service Corporation for the primary purpose of providing human resource consulting services to small business customers.

Please be advised that it is the intent of the Department to approve the proposed activity by the Service Corporation to the same extent as and subject to the same conditions under which such activity may be conducted by a subsidiary of a national bank under the OCC's Corporate Decision No. 98-51 (CCH ¶ 81-306, Nov. 30, 1998). To the extent the Bank or the Service Corporation exceeds the authority provided by the OCC to subsidiaries of national banks, the Bank may be required to seek and obtain approval from the FDIC to engage in such excess capacity activity pursuant to section 24 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1831a.

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The Department's letter dated May 25, 1999 continues to serve as an approval for the Bank to engage in employee benefit and compensation advisory services through the proposed Service Corporation. It is recommended that you or your staff review the Service Corporation's Articles of Incorporation to ensure that the proposed employee benefit and compensation advisory services constitute permissible activities for the Service Corporation.

The Department's analysis is based upon the facts as stated in this letter. Any change in the facts could result in an amendment or reversal of the Department's position. This letter states the Department's position regarding the issues discussed herein and may not be relied upon or construed as constituting legal advice.

Please contact me if you have any further questions regarding this matter.

Sincerely,

Richard S. DeMartino  
Director, Bureau of Supervision and Enforcement