

(717) 787-1471

February 11, 1999

Re: Ability of Pennsylvania State-Chartered Bank to Make Minority Investment in Title Insurance Agency in Limited Partnership Form.

Dear :

This responds to your request for the position of the Department of Banking ("Department") regarding whether a Pennsylvania state-chartered bank may make a minority investment as a limited partner in a title insurance agency that is in limited partnership form. You indicated that you represent the title insurance agency which is conducting business in [redacted] County. The identity of the bank that may invest in this title insurance agency that is in limited partnership form is not provided in your request letter.

Brief Conclusion: Please be advised of the Department's position that a Pennsylvania state-chartered bank may make a minority investment as a limited partner in a title insurance agency in limited partnership form, subject to certain conditions stated below.

Background Discussion of Bank and Subsidiary Corporation Ability to Sell Title Insurance: A Pennsylvania state-chartered bank itself or through a subsidiary may sell title insurance consistent with Pennsylvania banking and insurance laws.

Regarding applicable banking law, section 315(i) of the Banking Code of 1965 ("Banking Code") provides Pennsylvania state-chartered with "all powers incidental to the conduct of banking business." 7 P.S. § 315(i). The sale of title insurance by banks is incidental to the conduct of banking business, since banks originate mortgage loans as a fundamental part of their banking business and title insurance is typically required to be purchased from or through a title insurance agent as a reasonable condition of the loan. See 7 P.S. § 310(d)(v)(borrower shall pay all expenses for title insurance on a real estate loan originated by a bank). In addition, the ability of banks to sell title insurance is neither prohibited nor restricted by section 406 of the Banking Code, since that section pertains only to title insurance underwriting. See 7 P.S. § 406. Regarding applicable insurance law, the Insurance Department Act of 1921 provides in relevant part that "a financial institution, and any officer, employe or agent thereof, that sells insurance shall be licensed in accordance with the provisions of this Act and regulations promulgated under this Act." 40 P.S. § 286(b). Construed together, the above cited banking and insurance laws support the conclusion that Pennsylvania state chartered banks may sell title insurance.

February 11, 1999

Page 2

Since title insurance may be sold by Pennsylvania state chartered banks, subsidiaries<sup>1</sup> of such banks also may engage in such activities, consistent with section 203(d) of the Banking Code. See 7 P.S. § 203(d). The Insurance Department Act of 1921 contains no prohibition on the ability of bank subsidiaries to engage in title insurance agent activities. Construed together, the banking and insurance laws referenced in this letter support the conclusion that subsidiary corporations that are by definition majority owned by Pennsylvania state chartered banks may sell title insurance.

Issue: Whether a Pennsylvania state chartered bank may make a minority investment as a limited partner in a title insurance agency that is in limited partnership form.

Discussion of Issue Presented: While the ability of a Pennsylvania state-chartered bank to invest in a subsidiary corporation is clear, there is no specific authority in the Banking Code for a bank to make a minority investment in a title insurance agency that is in limited partnership form.

As a comparative matter, national banks have been permitted on a conditional basis to make a minority investment in a limited partnership. More specifically, the Office of the Comptroller of the Currency ("OCC") authorized a national bank to make a minority investment in an automated teller machine and point of sale network, as a limited partner in a limited partnership joint venture between financial institutions and a data processing company. See OCC Interpretive Letter No. 705 (October 25, 1995). See also, OCC Interpretive Letter No. 687 (September 5, 1995) (national bank may invest as a limited partner in an investment limited partnership).

Section 103 of the Banking Code provides the Department with adequate rule-making power and administrative discretion to supervise and regulate Pennsylvania state-chartered banks in a manner that is flexible and readily responsive to changes in economic conditions and to changes in banking and fiduciary practices. See 7 P.S. § 103. Act 40 of 1997 confirms that financial institutions may sell title insurance and does not prohibit or restrict bank subsidiary corporations from engaging in such activity. See 40 P.S. § 286(b). Therefore, it is the Department's position that a Pennsylvania state-chartered bank may make a minority investment as a limited partner in a title insurance agency that is in limited partnership form, provided the four prong test stated below and utilized by the OCC to authorize minority investments in limited partnerships is adhered to by the Pennsylvania state-chartered bank.

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<sup>1</sup> For purposes of the Banking Code and this discussion, the term "subsidiary" is defined as "a corporation controlled by an institution which owns at least a majority of its shares." 7 P.S. § 102(bb.1)(emphasis added). The term "institution" in the definition of "subsidiary" includes a Pennsylvania state chartered bank. 7 P.S. § 102(q) and (r).

February 11, 1999

Page 3

More specifically, a Pennsylvania state chartered bank may make a minority investment in a limited partnership if the following four conditions are met:

- (1) The activities of the enterprise in which the investment is made must be limited to activities that are part of or incidental to the business of banking.
- (2) The bank must be able to prevent the enterprise from engaging in activities that do not satisfy this requirement.
- (3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise. (For example, the bank may not be a general partner in the limited partnership.)
- (4) The investment must be convenient or useful to the bank and not a mere passive investment unrelated to that bank's banking business.

The Department's analysis is based upon the facts and conditions 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.

The opinions stated herein pertaining to the Insurance Department Act of 1921 are not binding on the Pennsylvania Insurance Department.

Please contact me if you have any questions regarding this letter.

Sincerely,

Reginald S. Evans  
Chief Counsel

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