

February 2, 2004

[redacted]

Re: Nonprofit Corporation Acting as Fiduciary for Service Population

Dear **[redacted]**:

This responds to your letter to the Pennsylvania Department of Banking (the "Department") in which you request a determination by the Department of whether your client, **[redacted]** (the "Company"), may act as a fiduciary under testamentary documents for members of the Company's serviced population. You indicate in your letter that the Company is a nonprofit corporation that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c), that serves the mental health/mental retardation community with case management and advocacy services. While it is not clear from your letter, the Department assumes that the Company is a Pennsylvania nonprofit corporation.

As a general matter, Section 5547(a) of the Nonprofit Corporation Law of 1988 states that:

[e]very nonprofit corporation incorporated for a charitable purpose or purposes may take, receive and hold such real and personal property as may be given, devised to, or otherwise vested in such corporation, in trust, for the purpose or purposes set forth in its articles.

15 Pa.C.S.A. § 5547(a). The Banking Code of 1965 (the "Banking Code") places restrictions on corporations which act as fiduciaries in the Commonwealth of Pennsylvania. Specifically, Section 106(a) of the Banking Code provides that:

[n]o corporation existing under the laws of this commonwealth may lawfully act as fiduciary except:

(i) a bank and trust company, a trust company and, to the extent provided in this act, a savings bank,

(ii) a non-profit corporation,

7 P.S. § 106(a).

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While the Banking Code does not define “non-profit corporation,” the Department has consistently taken the position that a corporation must provide evidence to the Department regarding its non-profit status in order to be deemed a “non-profit corporation” for purposes of acting as a fiduciary pursuant to Section 106 of the Banking Code. Such evidence must include a ruling from the Internal Revenue Service indicating that that corporation is a non-profit corporation exempt from federal taxation under Section 501(c) of the Internal Revenue Code.

Therefore, in order for the Department to approve of the Company acting as a fiduciary in the manner indicated in your letter, the Company must provide the Department with evidence that the Company is chartered as a non-profit corporation under the laws of the Commonwealth of Pennsylvania and a ruling from the Internal Revenue Service stating that the Company is exempt from federal taxation under Section 501(c) of the Internal Revenue Code.

Please be advised that the Pennsylvania Orphan’s Court Rules and applicable Local Rules of Court of each county may be applicable to the fiduciary activities of the Company. You should consult the Pennsylvania Orphan’s Court Rules and any applicable Local Rules of Court for further guidance.

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 has been authorized by the appropriate Department personnel and constitutes a duly authorized statement of the Department’s position regarding the issues discussed herein. This letter may not be relied upon or construed as constituting legal advice.

Please do not hesitate to contact me if you have any further questions regarding this matter.

Sincerely,

Carter D. Frantz
Staff Counsel

cc: Timothy J. Blase
Director, Bureau of Supervision and Enforcement

James A. Acri
Administrator, Bureau of Supervision and Enforcement