

(717)787-1471

April 6, 1998

Re:

Dear

This is in response to your letter to the Pennsylvania Department of Banking (the "Department"), seeking the Department's approval \_\_\_\_\_, an Ohio state-chartered bank (with powers limited to trust services) ("Bank"), to act as a fiduciary in Pennsylvania, pursuant to section 106 of Pennsylvania's Banking Code of 1965 (the "Banking Code"), 7 P.S. § 106.

According to your letter, the Bank recently received approval from the Ohio Division of Financial Institutions to commence a trust business in Ohio. You state that the Bank intends to act as a fiduciary for an estate in Pennsylvania under the terms of the Last Will and Testament of

Section 106 of the Banking Code provides that:

No corporation existing under the laws of a state other than this Commonwealth or national bank located in another state, except an interstate bank, may act in this Commonwealth as a fiduciary unless:

- (i) it shall be appointed fiduciary by will or other testamentary writing, by a deed of trust or by a court or registrar of wills of this Commonwealth or it shall be designated as fiduciary by the beneficiaries or by one or more other fiduciaries of the estate or trust pursuant to the terms of the instrument, or
- (ii) it shall be the successor by merger or consolidation to a corporation lawfully acting as fiduciary in this Commonwealth at the time of such merger or consolidation

and unless the laws of such other state confer like powers on corporations existing under the laws of this Commonwealth. No corporation of another state or national bank located in another state authorized to act as a fiduciary pursuant to this subsection (b) shall be authorized to establish a place of business in this Commonwealth.

7 P.S. § 106(b).

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Please be advised that the Department must receive the following documents in order to approve the appointment of a foreign fiduciary in Pennsylvania under section 106 of the Banking Code:

1. Certificate of Authority from the foreign fiduciary's primary regulator;
2. Appointment of Pennsylvania's Secretary of Banking for the purposes of service of process;
3. Reciprocity letter from the state where the bank is located indicating that a Pennsylvania banking institution may act as a foreign fiduciary in that state on terms substantially similar to those in Pennsylvania;
4. Proper appointment as foreign fiduciary consistent with section 106(b) of the Banking Code;
5. Copy of the trust document.

The Department is in receipt of: 1) a Certificate of Authority issued by the State of Ohio, Division of Financial Institutions authorizing the Bank to engage in a trust business in the State of Ohio; 2) an executed Appointment of the Pennsylvania Secretary of Banking as Attorney for Service of Process; 3) a letter addressed to \_\_\_\_\_, Esquire, Ohio Division of Financial Institutions, indicating that the laws of Ohio and Pennsylvania are substantially similar to allow the Bank to act as a foreign fiduciary in Pennsylvania;<sup>1</sup> and 4) an unexecuted copy of the Last Will and Testament of \_\_\_\_\_, Petition for Grant of Letters of Administration, and Oath of Personal Representative.

Please be advised that the Department hereby issues its conditional approval for the Bank to act as a foreign fiduciary in Pennsylvania, under the terms of the Last Will and Testament of \_\_\_\_\_. The Department's approval is conditional upon the Department's receipt of documentation evidencing the appointment of the Bank as executor under the Last Will and Testament of \_\_\_\_\_. Please note that the Department's approval herein pursuant to 106(b) of the Banking Code should

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<sup>1</sup> In a conversation with \_\_\_\_\_, Attorney Examiner of the Ohio Division of Financial Institutions, I confirmed that the laws of Ohio and Pennsylvania are reciprocal for purposes of this request.

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not be construed as authorizing the establishment of an office in Pennsylvania by Bank. The Department's analysis is based upon the facts and conditions as stated in this letter. Any change in the facts could result in a 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.

With respect to \_\_\_\_\_ of Pennsylvania's request to dissolve, you have confirmed in your letter to me dated March 26, 1998, that the President of \_\_\_\_\_ of Pennsylvania has received confirmation from all funded accounts confirming the appointment of the Bank as successor to \_\_\_\_\_ of Pennsylvania. However, before the Department is able to approve the dissolution of \_\_\_\_\_ of Pennsylvania, the Department will need written confirmation, regarding all of the other funded accounts which have been transferred to the Bank, that: i) the Bank will not be administering assets in Pennsylvania; ii) the situs of the trust accounts is not otherwise in Pennsylvania; iii) the nature of the fiduciary relations is not such that the Bank requires appointment by a Pennsylvania court in order to become a trustee under the trust accounts; and iv) the Bank has not established an office location in Pennsylvania in violation of sections 106(b) and/or 904 of the Banking Code, 7 P.S. § 106(b), 904.

If you have any questions regarding this matter, do not hesitate to contact me.

Very truly yours,

Laurie S. Kennedy  
Deputy Chief Counsel

LSK:JEE:jee

cc: Reginald S. Evans, Esquire  
James Acri, Administrator  
John Black, Manager  
Pamela Grandon, Esquire