



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING
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Mrs. Secy. Fid.

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SECRETARY OF BANKING

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TO: ALL CHIEF EXECUTIVE OFFICERS OF PENNSYLVANIA STATE-CHARTERED BANKS, BANK AND TRUST COMPANIES, SAVINGS BANKS, AND NATIONAL BANKS LOCATED IN PENNSYLVANIA

The Department has received several inquiries regarding the authority of Pennsylvania state-chartered banks, bank and trust companies, and savings banks ("banking institutions") to act as agents in the sale of all types of insurance products. Interest has been intensified by the recent unanimous decision of the U.S. Supreme Court in Barnett Bank of Marion County, N.A. v. Bill Nelson, Florida Insurance Commissioner, 116 S.Ct. 1103 (1996). Barnett confirms that national banks have the statutory authority to act as agents in the sale of life, property and casualty, and other types of insurance provided the bank is located in any place the population of which does not exceed 5,000 inhabitants. This authority exists even if state law contains provisions which state that banks cannot sell insurance.

The effect of Barnett in Pennsylvania is that the Pennsylvania anti-affiliation statute, 40 P.S. § 281, which prohibits "lending institutions" from acting as insurance agents is no longer applicable to national banks. However, this creates a competitive disadvantage of serious economic proportions to Pennsylvania state-chartered banking institutions. Recognizing this disparity between state and national banking powers, the Department is exercising its rule-making authority and administrative discretion to ensure that Pennsylvania state-chartered institutions remain competitive with other financial organizations operating in this Commonwealth.

Therefore, you are advised that Pennsylvania state-chartered banks, bank and trust companies and savings banks may act as agents in the sale of property and casualty, life, or other types of insurance provided the bank is located in any place the population of which does not exceed 5,000 inhabitants, pursuant to their incidental powers provided in Sections 315 and 502 of the Banking Code of 1965, as amended, 7 P.S. §§ 315(i), 502(h). This grant of authority to Pennsylvania state-chartered banking institutions is analogous to the authority provided to national banks in Barnett. The Department of Banking's position herein is consistent with the authority provided by the General Assembly to the Department of Banking in Section 103 of the Banking Code of 1965, as amended, 7 P.S. § 103.

The authority of banks to offer various types of financial services and products, including investment products, to their customers has consistently been recognized as a power incidental to the business of banking. The official comment to Section 315 states that the incidental powers provision covers a wide range and variety of activities in which institutions engage as part of the conduct of their banking business and is intended to cover other activities in which institutions may engage in the future. The ability of banks to offer insurance products has been recognized as a proper contemporary banking activity by the Federal government and the majority of the states.

Furthermore, state banks have acted for decades as agents in the sale of credit life, accident and health insurance in connection with the exercise of their lending authority. In consideration of the nationwide progression of banks towards acting as insurance agents, the Department considers the sale of insurance to be an activity incidental to the business of banking.

In practice, it is the function and responsibility of the Department to determine activities which are authorized for state-chartered banks under the incidental powers provisions contained in the Banking Code. Section 103 of the Banking Code empowers the Department with adequate rule-making power and administrative discretion so that the regulation of state-chartered institutions may be flexible and readily responsive to changes in banking and fiduciary practices. In response to the changes in banking practices triggered by Barnett, it is not only reasonable but imperative that the Department interpret the provisions of the Banking Code, specifically Sections 103, 315 and 502, in a manner consistent with major banking industry developments by allowing state-chartered banking institutions to compete in insurance sales subject to rules substantially similar to those imposed upon national banks by the Office of the Comptroller of the Currency.

By recognizing the authority of state-chartered banking institutions to engage in insurance agency activities as an incidental power, the Department is fulfilling its statutory mandate under Section 103: 1) to ensure that Pennsylvania state-chartered institutions are afforded the opportunity to remain competitive with each other and other financial organizations operating within the Commonwealth; and 2) to provide state-chartered institutions with the opportunity to effectively serve the convenience and needs of their depositors, borrowers and other customers and to participate in and promote economic progress of Pennsylvania by improving and expanding their services and facilities for the benefit of consumers.

The Pennsylvania Insurance Department has developed a Policy Statement for both national and state-chartered banks selling insurance or annuities, a copy of which is attached. It is my understanding that the Insurance Department's Policy Statement reflects state law applicable to all agents selling insurance in Pennsylvania as well as the provisions of the OCC Advisory Letter

(AL 96-8) (October 8, 1996) which national banks as well as state banks should refer to for guidance. The Department of Banking is pleased to have been of service to the Insurance Department in the development of this policy. Accordingly, you are advised to contact the Insurance Department for license applications and renewal information pertaining to your bank or any of its operating subsidiaries acting as insurance agents in Pennsylvania.

Sincerely,

Richard C. Nishel

Attachment