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SPRINGFIELD

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FILE NO. 85-011

FINANCIAL INSTITUTIONS:
Trust Companies May Branch

William C. Harris
Commissioner of Banks and Trust Companies
Room 400 Reisch Building
Springfield, Illinois 62701

Dear Commissioner Harris:

I have your letter wherein you inquire whether a pure trust company may establish branch offices outside the municipality in which it has its principal place of business. For the reasons hereinafter stated, it is my opinion that a pure trust company may establish branch offices anywhere within the State of Illinois, including locations outside the municipality in which the trust company has its principal place of business.

A pure trust company is a corporation organized under The Business Corporation Act of 1933 (Ill. Rev. Stat. 1983, ch.

32, par. 157.1 et seq.) or the Business Corporation Act of 1983 (Ill. Rev. Stat. 1984 Supp., ch. 32, par. 1.01 et seq.) which is qualified to act as a fiduciary pursuant to "AN ACT to provide for and regulate the administration of trusts by trust companies" (Ill. Rev. Stat. 1983, ch. 17, par. 1551 et seq.), hereinafter referred to as the Trust Companies Act. Although a pure trust company may be a wholly-owned subsidiary of a bank holding company, a pure trust company is not a "bank" or a "banking house", as those terms are defined in section 2 of the Illinois Banking Act (Ill. Rev. Stat. 1983, ch. 17, par. 302). A trust company does not have banking powers, and a trust division of a banking corporation is not a pure trust company. (St. Louis Union Trust Co. v. Pemberton (Mo. Ct. App. 1973), 494 S.W.2d 408, 410.) As the Illinois Supreme Court stated in Wedesweiler v. Brundage (1921), 297 Ill. 228, 235-36:

" * * *

> * * * An individual is not engaged in the banking business because he does some of the things which are frequently or usually done by banks. Banks frequently buy and sell government and municipal bonds and the stocks and bonds of private corporations for themselves or for others for whom they act as brokers, they make collections for others, they make loans on the security of real estate mortgages, and they act as trustees by appointment of courts or under wills or deeds. They do these things, not because they are banking functions or are strictly incidental to the banking business, but because they can do them advantageously in connection with the banking business. The brokerage business, the collection business, the mortgage

> loan business or the business of acting as trustee does not, therefore, become banking business. Brokerage corporations, collection agencies, mortgage loan companies and trust companies are not bankers because the business which they transact may be, and is frequently, done by banks, and a statute which by its title refers to banks and banking, only, cannot apply to such companies. * * *
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> (Emphasis added.)

Consequently, the provisions of the Illinois Banking Act, and specifically section 6 thereof (Ill. Rev. Stat. 1983, ch. 17, par. 313), which prohibits branch banking, do not apply to trust companies. Furthermore, article XIII, section 8, of the 1970 Illinois Constitution, which authorizes branch banking only by legislation approved by three-fifths of the members of the General Assembly voting on the question or a majority of the members elected, whichever is greater, applies only to banks and not to all financial institutions. (See generally McHenry State Bank v. Harris (1982), 89 Ill. 2d 542.) Since trust companies are corporations organized for the purpose of administering trusteeships and other fiduciary relationships (see G. Bogert, The Law of Trusts and Trustees § 136 (2d ed. 1965)), it is clear that, as compared to banks, trust companies are financial institutions of a different nature. See also Kelly v. Guild (1963), 42 Ill. App. 2d 143, 157-58.

Section 1 of the Trust Companies Act (Ill. Rev. Stat. 1984 Supp., ch. 17, par. 1551) provides as follows:

"(a) Any corporation which has been or shall be incorporated under the general corporation laws of this State for the purpose of accepting and executing trusts, and any corporation now or hereafter authorized by law to accept or execute trusts, may be appointed assignee or trustee by deed, and executor, guardian or trustee by will, and such appointment shall be of like force as in case of appointment of a natural person. Such corporation so incorporated or authorized after the effective date of this amendatory Act of 1973 shall have minimum capital, surplus and reserve for operating expenses as follows:

(1) if in a location not within a city, village or incorporated town, or if within a city, village or incorporated town with a population of less than 10,000, a minimum capital of $50,000;

(2) if within a city, village or incorporated town with a population of 10,000 or more but less than 50,000, a minimum capital of $100,000;

(3) if within a city, village or incorporated town with a population of 50,000 or more, a minimum capital of $200,000.

In each case set forth in subparagraphs (1), (2) and (3) there shall be added a minimum surplus which shall be at least 50% of the capital, and a minimum reserve for operating expenses of at least 25% of the capital.

(b) Any such corporation which is owned or controlled, directly or indirectly, by a bank holding company may accept and execute trusts, conduct its business and carry on its operations at the office designated in its charter and at the banking house of any bank owned or controlled, directly or indirectly, by the bank holding company."

As stated above and as section 1 clearly provides, trust companies are corporations organized under the general corporation laws of this State, viz., The Business Corporation Act of 1933 or the Business Corporation Act of 1983. While the general corporation laws of this State impose several special requirements upon trust companies as opposed to other business corporations, such as the requirement that trust companies use the word "trust" in their corporate names (Ill. Rev. Stat. 1983, ch. 32, par. 157.9; Ill. Rev. Stat. 1984 Supp., ch. 32, par. 4.05) and the requirement that trust companies submit to the Secretary of State a statement from the Commissioner of Banks and Trust Companies certifying that the corporation has made arrangements with the Commissioner to comply with the Trust Companies Act (Ill. Rev. Stat. 1983, ch. 32, par. 157.165; Ill. Rev. Stat. 1984 Supp.. ch. 32, par. 1.70), neither the respective Business Corporation Acts nor the Trust Companies Act contains provisions prohibiting branching by trust companies. In fact, the general corporation statutes expressly allow corporations organized thereunder to have offices anywhere within this State to perform their authorized activities. Section 3.10 of the Business Corporation Act of 1983 (Ill. Rev. Stat. 1984 Supp., ch. 32, par. 3.10) provides in part as follows:

> "General powers. Each corporation shall have power:

* * *

(j) To conduct its business, carry on its operations, and have offices within and without this State and to exercise in any other state, territory, district, or possession of the United States, or in any foreign country, the powers granted by this Act.

* * * "

(Emphasis added.)

(See also section 5 of The Business Corporation Act of 1933 (Ill. Rev. Stat. 1983, ch. 32, par. 157.5).) Moreover, the Trust Companies Act explicitly confers upon a trust company the power to act as a fiduciary anywhere within the State, irrespective of where the principal office of the trust company may be. Section 2 of the Trust Companies Act (Ill. Rev. Stat. 1983, ch. 17, par. 1553) provides in part as follows:

"(a) Whenever application shall be made to any court in this state for the appointment of any receiver, assignee, guardian, executor, administrator or other trustee, it shall be lawful for such court to appoint any such corporation as such trustee, receiver, assignee, guardian, executor or administrator: Provided, any such appointment as guardian shall apply to the estate only, and not to the person.

* * * "

(Emphasis added.)

One commentator has noted that while trust companies cannot engage in any business which lies outside their express or implied powers, they may clearly establish branch offices. 6 Fletcher, Cyclopedia of the Law of Private Corporations § 2561 (Perm. Ed. 1979).

As you know, in opinion No. 2921, issued November 25, 1930 (1930 Ill. Att'y Gen. Op. 570), Attorney General Carlstrom advised that a trust company could not have a branch office outside the city in which it had its principal office. Attorney General Carlstrom reached this conclusion based upon his interpretation of the deposit requirements of the Trust Companies Act. Then, as now, trust companies were required to deposit securities of a certain par value before the trust company could render fiduciary services. That deposit, which was formerly made with the Auditor of Public Accounts, is now made with the Commissioner of Banks and Trust Companies.

One of the factors in determining the amount of the securities deposited was the population of the city or town in which the trust company was located. Section 6 of the Trust Companies Act (Ill. Rev. Stat. 1983, ch. 17, par. 1558) currently provides as follows:

> "Each company in all cities and towns of 250,000 inhabitants or more, before accepting any such appointment or deposit, shall deposit with the Commissioner of Banks and Trust Companies, hereinafter called Commissioner, securities of the par value of $200,000 and each company in all cities and towns of less than 250,000 inhabitants shall deposit with the Commissioner securities of the par value of $50,000. Such securities shall consist of general obligations of or fully guaranteed by the United States, or of any agency or instrumentality of, or corporation wholly owned by the United States directly or indirectly; direct general obligations of the State of Illinois, or of any county, city, town, village, school district, sanitary district, park district

> or other political subdivision or municipal corporation of the State of Illinois. Such securities shall be held by the Commissioner, to secure the performance of such company to the beneficiary of any fiduciary relationship assumed by it. * * *
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> When it shall appear to the Commissioner, from the annual report of any such company that the value of the personal property and cash held by such company by virtue of the provisions of this Act, and any amendment thereof, exceeds ten times the amount of the deposit aforesaid, he shall require said companies, if in cities and towns of 250,000 inhabitants or more, to increase said deposit to the sum of $500,000 in such securities, and in all cities and towns of less than 250,000 inhabitants to increase its said deposit to the sum of $125,000 in such securities. And whenever it shall appear to the Commissioner that the amount of personal property and cash so held by any such company has been reduced below ten times the value of its original deposit above provided for, and said company is not in any default in its duties and obligations hereunder, he shall allow said company to reduce its said deposits to the sum originally required in this section by the withdrawal of such additional deposits until such time as an increase in its holdings shall again require an additional deposit as hereinbefore provided. No corporation authorized to accept and execute trusts shall, either directly or indirectly through any officer, agent or employee of such corporation, accept or execute any trust concerning property located wholly or in part in this State without complying with the provisions of this Act and all amendments thereto; * * *"

Based upon similar provisions, Attorney General Carlstrom advised:

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> * * * The population * * * will regulate the size of deposit required under the Trust Company Act * * *. Thus, it apparently is the intent of

> the legislature in this act that the population of the city where the principal office of the company is located would indicate the amount of business which should be protected by this deposit. It seems to be entirely without the intent of the legislature to say that a company could be located in a town of less than 100,000 inhabitants [now 250,000 inhabitants], make a deposit of $50,000.00, and then have a branch office in a city of more than 100,000 inhabitants [now 250,000 inhabitants]. This procedure obviously would be contrary to the intent of the statute. * * * Thus, it would seem that the legislature had in mind the proposition that a trust company would be definitely located in only one city and its deposit would be regulated by the population of that city.
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> 1930 Ill. Att'y Gen. Op. 570, 571-72.

It appears that Attorney General Carlstrom misapprehended the intent of the General Assembly as well as the impact of the deposit requirements as set forth in the Trust Companies Act. The purpose of requiring trust companies to make deposits is to afford trust creditors a measure of protection not afforded general creditors of the trust company. (People ex rel. Nelson v. The Chicago Bank of Commerce (1939), 371 Ill. 396, 404; Kelly v. Guild (1963), 42 Ill. App. 2d 143, 158.) The deposit requirements are clearly not intended to act as an implied limitation regarding branching.

While population is a factor in ascertaining the amount of the deposit, it is not the only significant one. If the value of the personal property and cash held by that

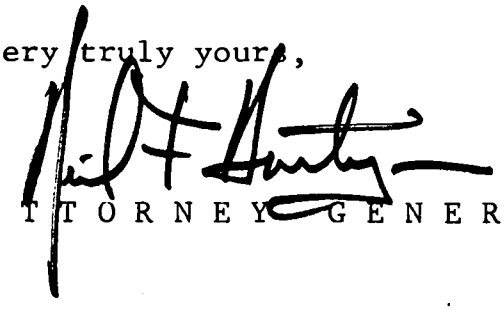
company exceeds ten times the amount of the deposit required by section 6 of the Trust Companies Act, the Commissioner of Banks and Trust Companies shall require the deposit to be increased to $500,000 for trust companies operating in cities and towns of 250,000 inhabitants or more. Therefore, it appears that the General Assembly believed that a deposit of $500,000 was sufficient protection for the trust creditors, irrespective of the size of the city or town where the trust company had its principal office. Since the value of personal property and cash held by the trust company is a cardinal factor in determining the amount of the deposit, it is my opinion that section 6 of the Trust Companies Act cannot be construed as proscribing branching by trust companies.

If the General Assembly had intended to restrict trust companies in the establishment of branch offices, it would have found the appropriate words to implement such restriction (Media Title and Trust Co. v. Cameron (Pa. S. Ct. 1927), 137 A. 129, 130), as it did in prohibiting branch banking in section 6 of the Illinois Banking Act (Ill. Rev. Stat. 1983, ch. 17, par. 313). It is consistent with the purpose and intent of section 6 of the Trust Companies Act to permit trust companies to establish branch offices. Of course, if a trust company with its principal office in a city or town of less than 250,000 inhabitants establishes a branch office in a city or town of

250,000 inhabitants or more, such a trust company must satisfy the deposit requirements pertaining to the larger city or town.

As stated above, neither the Trust Companies Act nor the general corporation laws expressly or impliedly circumscribe the establishment of branch offices by pure trust companies. Moreover, the Business Corporation Acts of 1933 and 1983 specifically authorize corporations organized thereunder, as trust companies are, to have offices anywhere within this State. Trust companies are statutorily empowered to render fiduciary services on a state-wide basis, irrespective of where they have their principal places of business. Based upon the foregoing reasons, it is my opinion that a pure trust company may establish and operate branch offices anywhere throughout the State of Illinois, including beyond the limits of the municipality where such trust company has its principal place of business.

Very truly yours,



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