



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

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ISGC-2007-007-DOB

(Superseding ISGC – 2005 – 009 – DOB, dated 07/25/2005)

April 5, 2007

[REDACTED]

RE: Direct Sales of Property & Casualty (Fire) Insurance by State-Chartered Savings Banks

Dear Mr. Hall:

On or about July 25, 2005, we issued an interpretive letter (ISGC-2005-009-DOB) to [REDACTED] Bank (“Bank”), partially entitled “*Insurance-Related Powers of a Washington-Chartered Depository Institution Acting as an Insurance Agency.*” Subsequently, we issued another interpretive letter to you, ISGC-2007-001-DOB, dated January 9, 2007, which addressed only direct sales of life and disability insurance by Bank. Now, the purpose of this interpretive letter is to opine on Bank’s ability to make direct sales of *property and casualty (fire) insurance*.

1.0 Summary Interpretation

We have determined that Bank may engage directly in the sale of property and casualty insurance products, including fire insurance, to mortgage loan applicants and existing mortgage loan borrowers, provided that the mortgaged property is either situated (1) in a city in which Bank has a branch, loan production office, or automated teller machine (“ATM”),¹ or (2) in an immediate contiguous suburb to one of Bank’s branches, loan production offices, or ATMs.

¹ This must be a *Bank-owned* ATM, rather than an ATM owned by another bank or independent ATM owner with whom Bank customers may access their accounts.

As you already know, insurance sales by a “subsidiary” or “affiliate” of Bank, or an independent, third-party licensed sales agent, would be generally *exempt* from any *state banking law* restrictions.² To the extent that you would seek to still conduct insurance sales through a “subsidiary” or “affiliate” of Bank, certain restrictions contained in Title 32 RCW are not applicable to the “subsidiary” or “affiliate.”³

Our interpretation is based upon the analysis and discussion set forth in Section 2.0 below.

2.0 Analysis and Discussion

According to RCW § 32.08.140 —

Every mutual savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

• • • •

(9) To act as insurance agent for the purpose of writing *fire insurance* on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary.

[Emphasis added.]

RCW § 32.08.140, enacted by the Legislature in the Mutual Savings Bank Code of 1955 [Session Laws, Chapter 13], is simple and straightforward.⁴ However, we do feel it is important to make three points of clarification, as follows:

² There are, however, both FDIC rules and state insurance regulations addressing sharing of commissions or the making of “referral fees” with respect to insurance sales activity as between Bank and a third-party insurance sales agent. The federal and state regulations appear, in this instance, to be compatible with and complementary of each other. Both regulations impose restrictions on how and when “referral fees” may be made to Bank for “referrals,” if Bank is *unlicensed*. If Bank has obtained an OIC license, Bank might be permitted to avoid the restrictions imposed by RCW 48.17.490 (although OIC, *and not DFI*, decides how this state law is interpreted and enforced). However, a relationship with a *non-affiliate* third-party sales agent of Bank, because it is a “person” acting “on behalf of Bank,” will likely be subject Bank to *federal* banking regulations restricting the manner of and compensation for “referrals.” Also, an “affiliate” of Bank, which would include any company under common control by the same entity (e.g., a holding company) “controlling” Bank, is subject to this same FDIC rule.

³ This is still the preferred method of doing business by nearly all Washington State-chartered commercial and savings banks. Even though the publication of this interpretive letter, ISGC-2006-012-DOB, dated November 22, 2006, and ISGC-2007-001-DOB, dated January 9, 2007, may cause some of our other stakeholders to consider direct insurance sales by the depository institution itself, we feel obliged to reiterate the exemption available in the traditional use of a “subsidiary” or “affiliate” to conduct insurance sales.

⁴ RCW § 32.08.160, also enacted by the Legislature at the same time, has unfortunately been a source of confusion. RCW § 32.08.160 declares: “When a savings bank is itself acting as an insurance agent, a trustee, officer, or employee of the bank shall not act as an insurance agent to write fire insurance on property in which the bank has an insurable interest, and no part of a room used by a savings bank in the transaction of its business shall be occupied or used by any person other than the bank in the writing of fire insurance.” As we interpret RCW § 32.08.160, however, the sole intent of the Legislature was to prevent a bank trustee, officer or employee from competing for business against the bank. Any other interpretation would be illogical, because a corporation (i.e., the bank) must necessarily act through its directors (trustees), officers and employees. The “room segregation” clause is also somewhat consistent with the FDIC rules and OIC regulations mentioned in Footnote 1 above, which are controlling and supersede RCW § 32.08.160 to the extent of any inconsistency.

In our interpretive letter to you, ISGC-2007-001-DOB, dated January 9, 2007, we permitted Bank to invoke the powers of a federal mutual savings bank, pursuant to RCW § 32.08.146, or what we commonly refer to as the exercise of “federal parity.” However, we did so not simply because we believed that the direct sale of general life and disability insurance was permitted by the federal Home Owners Loan Act of 1933 (“HOLA”) pursuant to seminal opinions of the Office of Thrift Supervision (“OTS”) dating back to 1994.⁶ We did so because OTS had specifically opined that HOLA permits a federal mutual savings bank to directly sell life and disability insurance directly tied to payoff of loans made by the same institution (i.e., credit life and disability coverage). Based upon the test of HOLA powers outlined in 1994 and the specific OTS opinion as to credit life and disability insurance, it was not a leap for us to conclude that HOLA powers extended to *general* life and disability insurance.

However, the same cannot be said of direct sales of *property and casualty* insurance, including *fire* coverage. The OTS does not appear to have ever opined directly on the subject of direct sale of fire insurance by federal mutual savings bank or federal savings associations. Moreover, the National Bank Act specifically prohibits direct insurance sales by a national bank in any location in which the population exceeds 5,000 inhabitants.⁷

State laws, such as RCW § 32.08.140(9), in effect as of September 3, 1998, which place discriminatory geographic restrictions on the direct sale of insurance by state-chartered banks and thrifts, are still permissible and not preempted by the Gramm-Leach-Bliley Act.⁸ Congress left it up to state legislatures to decide whether to repeal such discriminatory provisions after the enactment of the Gramm-Leach-Bliley Act. Since the Washington State Legislature has not so acted, Bank is still bound by the geographic restrictions of RCW § 32.08.140(9).

3.0 Concluding Remarks

The interpretation made above is generally applicable to all state-chartered savings banks, similarly situated, and to state-chartered commercial banks by means of “cross-charter parity” under RCW § 30.04.217. However, to the extent that this interpretive letter addresses issues in a general manner and not the specific circumstances of persons other than Bank, it may not be applicable to particular issues of concern to other state-chartered commercial banks and savings banks.

⁶ See ISGC-2006-012-DOB, dated November 22, 2006.

⁷ The National Bank Act, at 12 U.S.C. § 92. In enacting Gramm-Leach-Bliley Financial Modernization Act of 1999, Congress specifically chose not to amend the National Bank Act, at 12 U.S.C. §92. Moreover, 12 U.S.C. §92 and the companion Regulations of the Office of Comptroller of the Currency (“OCC”), at 12 C.F.R. §7.1001, are consistent with the restrictions set forth in RCW 30.08.140(10). Thus, the exercise of *federal parity* (i.e., invoking the powers of a national bank) would not generally benefit Bank if it sought to engage in direct insurance sales to consumers without any geographic restrictions. Federal case law has interpreted 12 U.S.C § 92 so as to limit only the location of insurance sales offices in bank branches, not the location of insurance customers. Accordingly, so long as insurance offices are housed in bank branches in locations with populations no greater than 5,000 inhabitants, national banks may act as insurance agents without regard to location of their customers. See *NBD Bank, N.A. v Bennett*, 67 F.3d 629 (7th Cir. – Indiana, 1995); see also *Independent Ins. Agents of Am. v Ludwig*, 997 F.2d 958 (D.C. Cir., 1993). A national bank may rely upon *federal case law* interpreting 12 U.S.C. §92 to permit an insurance sales office in a bank branch situated in a town of no more than 5,000 inhabitants, while still permitting the national bank to make direct insurance sales to customers who reside *elsewhere*. No authoritative interpretation, however, including the important holding in *Barnett Bank, N.A. v Nelson*, 517 US 25, 116 S Ct 1103, 134 L Ed 2d 237 (1996), on remand, 84 F.3d 1401 (11th Cir. – Fla., 1996) has rendered unenforceable the basic geographic restriction with respect to insurance sales by national banks.

⁸ See 15 U.S.C. §6701(d)(2)(C)(ii).

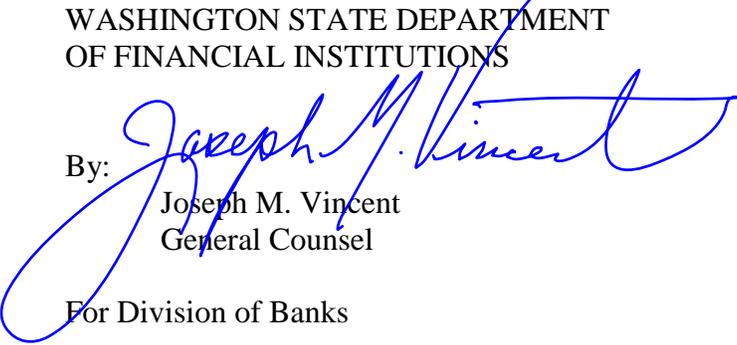
In addition, this interpretive letter addresses only the specific questions raised by Bank and does not express any opinion or interpretation of law or regulation with respect to insurance law and regulation in general. Accordingly, Bank is advised to look to the OIC for an interpretation of the Washington Insurance Code, Title 48 RCW, and applicable OIC regulations to be found generally at Title 248 WAC. In addition, Bank is advised to seek the advice of independent legal counsel with respect to the opinions and conclusions set forth in this interpretive letter.

Should you have any questions, please do not hesitate to call upon the Division of Banks at (360) 902-8704.

Yours very truly,

WASHINGTON STATE DEPARTMENT
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