

DOB OPINION 04-01

Date:

February 10, 2004

From:

David G. Kroeger, Director of Banks, Department of Financial Institutions

Subject:

Retention of Certain Powers and Authorities of a Stock Savings Bank (RCW Title 32) Upon Approval of an Application to Convert to a Commercial Bank (RCW Title 30)

The Stock Savings Bank [hereinafter, "SSB Bank"] is contemplating applying to the Division of Banks [hereinafter, "Division of Banks"] of the Department of Financial Institutions [hereinafter, "DFI"] for conversion from a Washington stock savings bank (RCW Title 32) [hereinafter, "Title 32 Bank"] to a Washington commercial bank (RCW Title 30) [hereinafter, "Title 30 Bank"]. Prior to making such application, however, SSB Bank has requested that the Director of Division of Banks opine on whether SSB Bank may retain certain powers and authorities of a Title 32 Bank upon conversion to a Title 30 Bank (i.e., a "resulting state bank") according to RCW § 32.34.010.

Barring any unforeseen conditions of and circumstances related to the institution, we have determined that, if SSB Bank were to convert into a Title 30 Bank, the Director of the Division of Banks would allow SSB Bank to retain certain powers and authorities of a Title 32 Bank in the manner and to the extent set forth in this letter.

However, in seeking permission to retain certain powers and authorities of a Title 32 Bank, SSB Bank must rely upon the provisions of RCW § 30.04.217, which was recently enacted by the Washington State Legislature (2003 c 24 § 1). Therefore, because this is the first time that we have been called to interpret and apply RCW § 30.04.217, we also take this opportunity to set forth the position of the "DFI" as to how a Title 30 Bank may exercise certain powers and authorities of a Title 32 Bank.

The Implications of the New Parity Statute

Controlling Statute. Neither RCW § 32.34.010 nor any other provision of Chapter 32.34 of the Revised Code of Washington addresses the retention of Title 32 powers and authorities upon conversion to a Title 30 Bank charter. Therefore, the controlling statute in this matter is RCW § 30.04.217, which provides as follows:

Notwithstanding any other provisions of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, **a bank or trust company shall have the powers and authorities conferred upon a mutual savings bank under Title 32 RCW, only if:**

1. **The bank or trust company notifies the director at least thirty days prior to the exercise of such power or authority by the bank or trust company, unless the director**

waives or modifies this requirement for notice as to the exercise of a power, authority, or category of powers or authorities by the bank or trust company;

2. **The director finds that the exercise of such powers and authorities by the bank or by the trust company serves the convenience and advantage of depositors, borrowers, or the general public; and**
3. **The director finds that the exercise of such powers and authorities by the bank or by the trust company maintains the fairness of competition and parity between banks or trust companies and mutual savings banks.**
4. **As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.**

The restrictions, limitations, and requirements applicable to specific powers or authorities of mutual savings banks shall apply to banks or trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this section.

[Italics added.] No General Invocation Allowed. RCW § 30.04.217 permits no general invocation of “parity” with the power and authority of a Title 32 Bank. Rather, as is evident from a reading of the governing statute, (1) a Title 30 Bank seeking to exercise any power or authority of a Title 32 Bank must notify the Division of Banks at least 30 days prior to the exercise of such powers and authorities, and (2) the Director of the Division of Banks must find that such exercise (a) serves the convenience and advantage of depositors, borrowers or the general public, and (b) maintains the fairness of competition and parity between Title 30 Banks and Title 32 Banks. Moreover, in some instances as noted in this letter, the exercise or retention of Title 32 powers and authorities will be determined by the Division of Banks only on a case-by-case basis. As in all applications or statutory request for a Director’s finding, the Division of Banks will make its determination with a view toward the overall safety and soundness of the institution making the application or request.

General Guidelines for Exercising Title 32 Bank Parity. When requesting to retain Title 32 Bank powers upon conversion to a Title 30 Bank charter, the institution making the request shall be mindful of the following general guidelines, which are consistent with the DFI’s existing statutory authority:

Continuance of Existing Practices. If the institution making the request can demonstrate that the exercise of Title 32 Bank powers and authorities is a continuation of actual and ongoing practices to which the institution has engaged without materially significant interruption prior to conversion, then the Division of Banks will generally permit the institution to continue engaging in such practices as a Title 30 Bank; provided, however, that the institution shall be in compliance with applicable federal laws and regulations pertaining to such powers and authorities.

Exception for Lending Limits. Notwithstanding the general rule for continuance of existing practices set forth above, the institution will not be permitted to exercise the lending limits of a

Title 32 Bank under a Title 30 Bank charter except on a case-by-case basis, subject to Title 30 Bank standards for safety and soundness.

Restrictions, Limitations & Requirements Applicable to Specific Powers or Authorities.

Notwithstanding the above, if a Title 30 Bank seeks to exercise a specific power and authority of a Title 32 Bank, the Title 30 Bank shall, in the exercise thereof, be bound by all restrictions, limitations and requirements of law associated with the exercise of that specific power and authority, including both state and federal laws and regulations.

SSB Bank's Specific Requests

The Division of Banks has received from SSB Bank seven (7) specific requests for exercise of Title 32 Bank powers and authorities either intrinsic to RCW Title 32 or by way of a federal parity provision contained in RCW Title 32.

RCW § 32.32.500 – Mergers, consolidation, conversion, etc. – Approval – Concentration Limits.

The RCW Title 32 contains a broader definition of “financial institution” and different concentration requirements than those contained in RCW Title 30. As outlined above, we will consider on a case-by-case basis any specific requests for the exercise of a broader definition of “financial institution” and concentration requirements as set forth in RCW Title 32.

RCW § 32.08.140 – Powers of Banks.

We have no objection to SSB Bank maintaining present real estate brokerage activities through its [city redacted] Office.

RCW § 32.20.330 Investments – Loans, Preferred Stock, or Interest-Bearing Obligations – Restrictions; (Loans to One Borrower).

We have no objection to the bank retaining existing loans that are presently not in conformance with lending limit restrictions as contained in RCW § 30.04.111. Any additional loans to the same borrower will be subject to the limits contained in RCW § 30.04.111.

RCW 32.20, RCW 32.04 – In Related Businesses.

A subsidiary of SSB Bank [hereinafter, “SSB Subsidiary”] is engaged in venture capital. We have no objection to the bank retaining SSB Subsidiary as a subsidiary of SSB Bank, subject to any conditions imposed by applicable state and federal banking regulators' rules, regulations, or orders.

RCW § 30.04.125 (3) authorizes investments in corporations, including stock in a small business investment company licensed and regulated by the United States as authorized by the Small Business Act, (Public Law 85-536, 72 Statutes at Large 384), in an amount not to exceed 5% of its capital and surplus, without the approval of the director.

RCW § 30.08.410, RCW § 32.20.330 – Unrelated Business.

The RCW Title 32 provisions include parity with the OTS provisions thereby giving a Title 32 Bank broader authority than Title 30 Bank. As outlined above, we will consider requests for such broader authority on a case-by-case basis.

RCW 32.20 – Securities.

Currently, SSB Bank has investments in corporate stock. We have no objection to the bank retaining its existing investments in corporate stock, subject to any conditions imposed by FDIC rules, regulations, or orders.

[12 U.S.C §1831 a] sets forth permissible activities for insured State banks. SSB Bank should review and be in compliance with any restrictions contained in 12. U.S.C. § 1831 a.

RCW Subsidiary Companies.

Title 32 provisions include parity with OTS provisions thereby granting Title 32 institutions broader authority than Title 30. As outlined above, we will consider this request on a case-by-case basis.

Concluding Remarks

We certainly hope that you appreciate that some of the requests you have presented concern matters that are of first impression before the Division of Banks and that, in the interest of the vitality of both charters (RCW Title 30 and RCW Title 32) we must steer a course that we believe will be rational, consistent and also dictated by applicable federal and state law and regulation.

We appreciate your patience in the receipt of our analysis. If you would like to discuss this interpretation in more depth or would like to present additional information for our consideration please contact me.