

DOB OPINION 96-009

Date: November 20, 1996

From: Unknown (“B”)

Subject:

Concerning the breadth of savings bank powers under amended RCW Title 32, specifically whether a Bank could invest, as an equity investor, in income producing real property, and whether it would have authority to put as much as its entire lending portfolio into business banking loans, without changing its charter.

Thank you for providing us a copy of the August 19, 1996 letter from John L. Bley, Washington’s Director of Department of Financial Institutions, to _____, President of _____. The subject matter of the letter concerns the breadth of savings bank powers under amended RCW Title 32.

The letter contains a detailed analysis of several bases upon which the Director has concluded that savings banks chartered under Title 32 “may exercise all the powers and authorities of savings and loan associations and commercial banks.” We concur with the Director’s legal analysis and believe that you may properly regard your charter as having this breadth of authority. I know this is of interest to you as you approach certain strategic planning consideration which you are likely to face over the next few months.

You have specifically asked us to consider:

- a. Whether _____ Bank could invest, as an equity investor, in income producing real property such as mobile home parks; and
- b. If _____ Bank pursues commercial lending activities common to commercial banks, would it have authority to put as much as its entire lending portfolio into business banking loans, without changing its charter.

Real Estate Investments

It is quite possible that the analysis of Director Bley’s letter would provide additional authority for your making real estate investments. This would be based upon the equalization of your authority with the authority allowed to a subsidiary of a bank. This is subpart (17) of amended RCW 32.08.140. However, concerning real estate investments, there appears to be sufficient and direct authority under RCW 32.20.285 for any such investments you are likely to make. This statute, RCW 32.20.285, permits your institution to invest in “real estate, improved or unimproved, and its fixtures and equipment, as a savings bank shall purchase either alone or with others or through ownership of interest in entities holding such real estate.” It includes the authority to “rent, lease, sell, and otherwise deal in such property, the same as any other owner thereof.” The investment total amount under this particular section is not to exceed 20% of a mutual savings bank’s funds. As defined in RCW 32.20.010, the reference to “its funds” includes deposits, the guaranty fund, income from either of these funds, and the principal balance

of outstanding capital notes or capital debentures. For a converted savings bank, it is likely that your capital which is shareholder equity is substituted for guaranty fund. In any event, your deposits are such that this direct authority is likely to encompass any real estate investment you would consider making. Overall prudence, and safety and soundness would apply to any such investments. This is consistent with the analysis in the Director's August 19 letter.

Extent of Commercial Loans

In addressing the breadth of your authority to make commercial loans, I will put aside the implications of the Community Reinvestment Act ("CRA") and other statutes and regulations which may imply a need to serve consumers. I understand your question to be whether you could devote the institution's lending efforts to commercial loans to the full extent a commercial bank could do so.

It is my belief that you do have such authority, and that this conclusion is fully consistent with Director Bley's August 19 letter, and the analysis reflected in it.

We note that the powers and authorities described in RCW 32.08.140 are independent of each other, and none is intended to express a percentage limitation or other diversification requirement. Therefore, when the Director has concluded that the new subparagraphs of RCW 32.08.140, as well as the convenient and useful incidental powers authority, include the power to exercise all powers and authorities of commercial banks, it is also a conclusion that such powers and authorities may be exercised to the full extent that such powers and authorities could be exercised by a commercial bank.

If a different conclusion were reached, the principal purpose of amending RCW 32.08.140 would be frustrated. It is my understanding the legislature intended to broaden substantially the authority of mutual savings banks in order to make this charter a viable charter in future competitive situations anticipated under interstate banking. If your charter were limited to a certain percent of exercising those powers and authorities, this purpose would not be realized. The temptation would be there for you and other holders of the charter to convert your charters in order to broaden your authorities and powers and to establish the needed certainty of authority for any degree of planning.

Therefore, while your authority under prior statutes, before the 1996 amendments, would have limited your commercial lending activity to a certain percent of your loans overall, it is our conclusion that such a limitation is immaterial in view of the additional authority given to you by the 1996 amendments to exercise all powers and authorities available to commercial banks.

Again, we would agree with the analysis in Director Bley's letter that safety and soundness principles would continue to apply and that your principal regulator could, in certain circumstances, influence the degree to which the bank decides to pursue commercial lending based upon reasonable regulatory considerations including the experience of available personnel, capital adequacy and the like.

Because of the newness of the 1996 amendments, you may wish to share a copy of this letter with Director Bley to see if he disagrees with our conclusion with respect to the percentage of commercial loans analysis. You are certainly authorized to do so and, if you and Director Bley would wish it, we would gladly participate in any meeting or conversation to discuss the subject.