

DOB OPINION 98-002

Date: November 23, 1998

From: John L. Bley, Director, Department of Financial Institutions

Subject:

Relating to purchase of the assets and assumption of the liabilities of a Washington bank branch by an out-of-state bank

You have written this office seeking out interpretation of whether a proposed acquisition by an out-of-state institution of the _____ Branch (the "Branch") of _____ Bank (the "Bank"), _____, Washington, would be permitted under Washington law. You advise me that the Bank is headquartered in _____, Washington and has been chartered to conduct a banking business in Washington for more than five years. The Bank, with its holding company, has entered into an agreement with _____ pursuant to which the Bank will merge with a new interim national bank, which will be the surviving bank in the transaction. As a condition for receiving approval for the transaction, the bank has agreed to divest the Branch to a competitively acceptable acquirer. Although the execution of an agreement to sell the Branch is a condition to closing the acquisition by _____, completing the sale of the Branch will occur after _____ acquires the Bank.

You indicate that at least one of the competing bidders for the Branch is a commercial bank headquartered outside the state of Washington that does not currently have any branches or other banking operations in this state. You are aware that an out-of-state financial institution may engage in banking in this state provided that the out-of-state bank resulted from an interstate merger or acquisition of all or substantially all of the assets, and provided that the acquired bank has been in operation for more than five years. RCW 30.38.010. Although the Branch is one of a number of branches operated by the Bank, you advise that, prior to the closing of a Branch Purchase and Assumption Agreement for the assets and liabilities of Branch, all or substantially all of the other banking assets including all of the other banking offices of the Bank will be acquired by _____ either pursuant to a separate purchase and assumption agreement or by a dividend of such assets and operation from the Bank to _____. At the time of the closing of the sale of the Branch to an out-of-state acquirer, the Branch would constitute the only remaining banking operation and substantially all of the assets of the Bank.

Based upon the foregoing facts as you have represented them, we believe that purchase of the assets and assumption of the liabilities of the Branch by an out-of-state bank would be consistent and would comply with Washington law, RCW 30.38.010. Please feel free to forward this letter to any of the federal banking regulatory authorities who might seek assurance from this office that such transaction would be consistent with Washington law. I would be happy to confirm this directly with any federal regulatory agency and comment specifically upon an application that might be filed by a proposed acquirer.