

August 24, 1998

Re: Lending Limits

Dear Mr. :

I write in response to your letter of August 19, 1998. You have inquired whether your client, Bank, would violate the lending limit statute, WV Code 31A-4-26, or the rules promulgated thereunder, if it provides a loan to a new limited liability company (LLC) for the purchase and renovation of a motel.

One individual (Bank Customer A) has personal borrowing that is approaching the limits set forth in WV Code 31A-4-26. He intends to form an LLC with another individual (Customer B) to purchase, renovate and operate a motel. The LLC is proposing taking a loan from your client to fund the purchase and renovation. The loan would be secured by a deed of trust on the motel and a security interest in personal property. The Bank intends to require Customer B to be a co-maker but will not require the personal signature, in any capacity, of Customer A.

I further understand that none of Customer A's other businesses are interdependent businesses and that total Bank loans to businesses in which Customer A has "control" is well under 50% of the Bank's unimpaired capital and unimpaired surplus. You have also represented that your client anticipates that motel revenue will be available to repay the loan and that the Bank does not look to Customer A to service the proposed loan.

Under the legislative rules regarding legal lending limits, the predominate requirement for the combining of loans or extensions of credit is the finding of "financial interdependence." Since the proposed loan is to a corporation, it is governed by section 5 of the legislative rules pertaining to legal lending limits, 106 CSR Series 9. The general rule in corporate loan cases is that a loan to a person (or corporation) and its subsidiary or to subsidiaries of one person (or corporation) need **not** be combined for legal lending limit purposes if the Bank determines that the parties are not engaged in a "common enterprise" as defined in section 4.2 of the rule.

Section 4.2 provides that the determination of whether a common enterprise exists depends on "a realistic evaluation of the facts and circumstances of particular transactions." The facts stated in your letter and during our phone conversations reveal

that none of Customer A's businesses are interdependent and that the Bank does not expect Customer A or any of his other businesses to be a source of repayment for the proposed loan.

Based upon the foregoing, it is our view that the Bank would not be in violation of the legal lending limits set forth in WV Code 31A-4-26. In reaching this conclusion, we assume that the articles of organization for the LLC will not contain a proviso that all members of the company are liable for the debts, obligations or liabilities of the company. See WV Code 31B-3-303. If such a proviso does exist and Customer A consented to its adoption and application to him, then the Bank may have to find a common enterprise exists between Customer A (with his outstanding loans) and the LLC (with its loan for the motel's purchase and renovation). In such a case the loans of Customer A would have to be combined with the loan to the LLC for legal lending limit purposes.

I hope this letter is helpful. If you need further information, please feel free to contact me.

Sincerely,

Robert J. Lamont
General Counsel