

December 5, 1997

Re: Out-of-State Trust Activities

Dear Mr. :

I am responding to your letter of October 22, 1997 in which you inquire as to whether Bank, NA, as an out-of-state national bank based in , could take title to real estate in West Virginia as a trustee under either a revocable or irrevocable trust agreement. Although I can not act as counsel for Bank, I can state that the position of West Virginia Division of Banking is that such activity alone would not amount to conducting an authorized trust business in West Virginia.

W. Va. Code § 31A-4-2 generally prohibits banks which do not have branches in this state from engaging in the trust business in West Virginia. This section provides that: *“No person doing business in this state, except a banking institution or a person authorized by the commissioner under the terms of this section, shall use or advertise in connection with such business, or as a designation or title thereof, the term ‘bank,’ ‘banker,’ ‘banking,’ ‘banking company,’ ‘industrial bank,’ ‘savings bank,’ or ‘trust company,’ or engage in the banking or trust business in this state.”* -- Id. subsection (a).

The term “banking institution” is defined in W. Va. Code § 31A-1-2(b) to mean *“a corporation or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U.S.C. § 1841(c), and shall embrace and include a savings bank, savings and loan association, trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct*

such business in this state.”—Id. (emphasis added). In short, only banks and thrifts having branches in West Virginia at which deposits are taken and commercial loans are made may engage in trust business in this state.

However, the issue of whether an out-of-state bank or trust company is “engaged in the trust business in this state” is dependent upon the particular facts presented and its methods of operation. This office has never asserted under W. Va. Code § 31A-4-2 that the mere fact that the grantor of a trust is a West Virginia resident or that the trust contained real estate in West Virginia, would preclude a national bank in another state having trust powers such as _____ Bank, NA from acting as trustee. Nor is the mere solicitation of such trust business through the interstate mail viewed by this office as an impermissible activity under our banking laws. Rather, it is when an out-of-state bank not having branches in this state seeks to solicit, arrange, or service trust agreements through affiliate or agent offices in this state, or by having persons conducting such activity in this state on their behalf—that we have objected to and interpreted as an illicit engagement in the trust business.

In short, I know of no impediment for _____ Bank, NA under the laws administered by this division which would prevent it from taking title to real estate in West Virginia as a trustee under either a revocable or irrevocable trust agreement.

If you have any questions concerning this letter, please contact me.

Sincerely,

Timothy C. Winslow
General Counsel