

September 25, 1996

Re: Illegal Additional Payments to Loan Officers

Dear Mr. :

Commissioner Bias requested that I respond to your inquiry concerning the legality of a bank's loan officer soliciting and obtaining additional personal income by acting as notary or as an appraiser for real estate transactions in which that loan officer is involved in approving. Upon a review of the matter, it appears that such payments would violate W. Va. Code § 31A-8-3. This conclusion is based upon the representations made as to the facts in this particular case. West Virginia code 31A-8-3 states that:

(a) It shall be unlawful for an affiliate of any corporate financial institution or for an officer, director or employee of any corporate financial institution or affiliate thereof:

(1) To solicit, accept or agree to accept, directly or indirectly, from any person other than such institution, any gratuity, compensation or other personal benefit for any action taken or omitted by such institution or for endeavoring to procure the same; ...

(c) Any person who violates any provision of this section shall be guilty of a misdemeanor and be subject to the penalties provided in section fifteen of this article.

Although the Truth-in-Lending Act permits the imposition of notary fees and appraisal fees in connection with real estate transactions as an additional charge, even if services are performed by the creditor's employees rather than by a third party, this does not address the impropriety occasioned where the money is being directly paid as personal income to the person making the loan decision. The restrictions set forth in state banking law are to prevent graft. While the intent of the employees may not have been to

demand personal compensation in return for obtaining the loan, but merely to provide the necessary services for closing the loan, the law would prohibit all such personal payments to employees active in the loan decision so as to avoid the potential of graft.

In short, while the bank in a real estate loan transaction may have its employees perform and be paid for notary and appraisal services, these persons may not be the loan officers or other persons making the credit granting decision, and they must be acting upon the authorization of the bank and may not privately make such solicitations on their own behalf.

Further, the bank should advise all employees that any income derived from providing notary or appraisal services must be properly reported for tax purposes as additional income, since these amounts would not be reflected on the bank's W-2 forms to such employees.

If you have any questions regarding this letter, please let me know.

Sincerely,

Timothy C. Winslow
General Counsel