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FINANCIAL INSTITUTIONS:
Whether Bank of a Foreign Nation
May Do Trust Business in Illinois

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Commissioner of Banks and Trust Companies
Room 400 Reisch Building
4 West Old State Capitol Plaza
Springfield, Illinois 62701

Dear Mr. Harris:

You have asked my opinion whether a bank of a foreign nation, having received a certificate of authority under the Foreign Banking Office Act, may conduct a trust business in Illinois. For reasons to be given, I conclude that under present statutes it may not do so.

Section 2.05 of the Foreign Banking Office Act (Ill. Rev. Stat. 1977, ch. 16 1/2, par. 502.05) defines "foreign banking corporation" as a bank operating under the laws of a foreign nation, and not controlled by United States citizens or by corporations organized under the laws of the United States. Section 3 (Ill. Rev. Stat. 1977, ch. 16 1/2, par. 503) then provides as follows:

"A foreign banking corporation, upon receipt of a certificate of authority from the Commissioner may establish and maintain a single banking office in the central business district of Chicago and may conduct thereat a general banking business. No such foreign banking corporation is, however, entitled to a certificate of authority under this Act unless, under the laws of the country under which such foreign banking corporation was organized, a State bank and a national bank may be authorized to maintain a banking office which may engage in a general banking business or may be authorized to own all the shares (except for directors' qualifying shares) of a banking organization organized under the laws of such country.

Upon receipt of a certificate of authority under this Act, a foreign banking corporation may conduct its banking business in this State with the same, but no greater, rights and privileges as a State bank, and except as otherwise provided in this Act, subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed under the Illinois Banking Act upon a State bank." (Emphasis added.)

In turn, section 3 of the Illinois Banking Act (Ill. Rev. Stat. 1977, ch. 16 1/2, par. 103) provides that:

"It shall be lawful to form banks, as herein provided, for the purpose of discount and deposit, buying and selling exchange and doing a general banking business, excepting the issuing of bills to circulate as money; and such banks shall have the power to loan money on personal and real estate security, and to accept and execute trusts, and shall be subject to all of the provisions of this Act." (Emphasis added.)

Although it can be argued that the words "may conduct its banking business in this State with the same, but no greater, rights and privileges as a State bank" give foreign banks the same powers as Illinois banks are given by section 3 of

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the Illinois Banking Act, including the operation of a trust department, the contrary interpretation, for reasons discussed below, is more persuasive.

The first reason can be seen from a close examination of the wording of the Foreign Banking Office Act itself. Its basic grant of authority states that a foreign bank may conduct "a general banking business". The terms "banking business" and "general banking powers" have been defined by the Illinois Supreme Court, and these definitions do not include executing trusts. In Wedesweiler v. Brundage (1921), 297 Ill. 228, 235-36, the court stated:

" * * *

* * * In Mercantile Nat. Bank v. City of New York, 121 U.S. 138, it was said: "The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities * * *". * * * Banks frequently buy and sell government and municipal bonds and the stocks and bonds of private corporations for themselves or for others for whom they act as brokers, they make collections for others, they make loans on the security of real estate mortgages, and they act as trustees by appointment of courts or under wills or deeds. They do these things, not because they are banking functions or are strictly incidental to the banking business, but because they can do them advantageously in connection with the banking business. The brokerage business, the collection business, the mortgage loan business or the business of acting as trustee does not, therefore, become banking business." (Emphasis added.)

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Similarly, in Knass v. Madison and Kedzie Bank (1933), 354 Ill. 554, 563, the court said.

" * * *

* * * The words 'general banking powers' are to be used in their common and ordinary sense. The ordinary and usual powers exercised by banks in doing general banking business are to loan money, to discount notes, receive deposits and deal in commercial exchange. They possess other powers, some of which are specifically conferred by statute, but these are the usual powers exercised in doing a general banking business." (Emphasis added.)

This established legal construction of the scope of "banking" and "general banking business" makes it clear that the phrase "a foreign banking corporation may conduct its banking business in this State with the same, but no greater, rights and privileges as a State bank," as used in section 3 of the Foreign Banking Office Act, means that a foreign banking corporation may conduct its banking business, as defined by the courts, with the same rights as a State bank, but not other businesses which State banks happen to be allowed to conduct.

The second reason for interpreting the Act as not allowing foreign banks to execute trusts in Illinois is evident from an examination of the history leading up to the passage of the Act. Illinois banks have been allowed to execute trusts since at least the passage of "AN ACT

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concerning corporations with banking powers" (Laws 1887, p. 89) and its approval the next year by the voters. Sections 102, 103 and 166 of The Business Corporation Act, passed in 1933 (Ill. Rev. Stat. 1951, ch. 32, pars. 157.102, 157.103, 157.166) in conjunction with "AN ACT to provide for and regulate the administration of trusts by trust companies" (Ill. Rev. Stat. 1951, ch. 32, par. 287 et seq.) until 1953 allowed corporations of other States and other nations to qualify to execute trusts in Illinois under the same terms as banks and other corporations established in Illinois: they were required to deposit security with the Auditor of Public Accounts (later changed to the Commissioner of Banks and Trust Companies) and to receive a certificate of authority from that officer.

However, a major change in this law was brought about by the enactment of three bills (House Bills 732, 733 and 734) in 1953 (Laws 1953, pp. 1148-1152). These enactments removed the authority of "foreign" corporations to qualify to execute trusts under the same statute as Illinois banks and corporations, providing instead that any such authority would have to be found in House Bill 732, "AN ACT authorizing foreign corporations, including banks * * * to act in a fiduciary capacity in this state, etc." (Ill. Rev. Stat. 1977, ch. 32, par. 304.1 et seq.). House Bill

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734, withdrawing the previous authority given by The Business Corporation Act to foreign corporations to execute trusts, did not define "foreign corporation", but that term was already defined in subsection 2(b) of The Business Corporation Act (Ill. Rev. Stat. 1953, ch. 32. par. 157.2(b)), which Act the bill amended, as "a corporation for profit organized under laws other than the laws of this State." The result of these changes was that corporations of either another State or another nation no longer could accept trusts under the same Act which applied to Illinois banks and corporations, but must seek authority to do so under the new "ACT authorizing foreign corporations, including banks * * * to act in a fiduciary capacity in this State, etc." just mentioned.

Section 1 of that Act (Ill. Rev. Stat. 1977, ch. 32, par. 304.1) is as follows:

"'Foreign corporation' as used in this Act shall mean:--

(a) Any bank or other corporation now or hereafter organized under the laws of any state or territory of the United States of America, including the District of Columbia, other than the State of Illinois, and

(b) Any national banking association having its principal place of business in any state or territory of the United States of America, including the District of Columbia, other than the State of Illinois." (Emphasis added.)

Section 2 of the Act authorized any "foreign corporation" to act as trustee or in other fiduciary capacities in this

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State, of (1) it is authorized by its State of incorporation or domicile to act as a fiduciary, and (2) its State of incorporation or domicile grants reciprocal privileges to Illinois corporations. However, section 5 of the Act (Ill. Rev. Stat. 1977, ch. 32, par. 304.5) provides that no foreign corporation may act in such fiduciary capacity in this State until the Commissioner of Banks and Trust Companies has determined that it and its State of incorporation or domicile meet the criteria set forth in section 2 and summarized above.

Thus, the General Assembly has established a coordinated plan governing banks and other corporations that wish to execute trusts. Those incorporated or domiciled in this State, in order to execute trusts, must make the prescribed deposit with and receive a certificate from the Commissioner of Banks and Trust Companies under the "ACT to provide for and regulate the administration of trusts by trust companies" (Ill. Rev. Stat. 1977, ch. 32, par. 287 et seq.). Those incorporated or domiciled in other States or territories of the United States must receive a certificate from the Commissioner of Banks and Trust Companies under the "ACT authorizing foreign corporations, including banks * * * to act in a fiduciary capacity in this State, etc." (Ill. Rev. Stat. 1977, ch. 32, par. 304.1). No provision in this

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statutory scheme has been made for allowing corporations of other nations to execute trusts in Illinois. It is difficult to believe that in passing the Foreign Banking Office Act, the General Assembly would have intended to allow foreign banks to execute trusts in Illinois without making appropriate changes in the statutes governing administration of trusts by trust companies. This confirms my conclusion that banks of foreign nations are not now authorized to do trust business in Illinois.

You have also asked, should my opinion on your question be in the negative, what effect this might have on the reciprocal provision of the Foreign Banking Office Act. This provision, in section 3 of that Act, quoted earlier (Ill. Rev. Stat. 1977, ch. 16 1/2, par. 503), is as follows:

" * * * No such foreign banking corporation is, however, entitled to a certificate of authority under this Act unless, under the laws of the country under which such foreign banking corporation was organized, a State bank and a national bank may be authorized to maintain a banking office which may engage in a general banking business or may be authorized to own all the shares (except for directors' qualifying shares) of a banking organization organized under the laws of such country.

* * *

My answer is that the opinion expressed above has no effect on reciprocity, so far as the Commissioner of Banks and Trust Companies of the State of Illinois is concerned. Your

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only duty in this regard is to determine whether the foreign nation-in question allows Illinois banks to carry on a banking business there. Should any foreign nation decide to exclude Illinois banks unless its own banks are allowed trust powers in Illinois, that would be a matter for the consideration of the General Assembly.

Very truly yours,

A T T O R N E Y G E N E R A L