



WILLIAM J. SCOTT

ATTORNEY GENERAL

STATE OF ILLINOIS

500 SOUTH SECOND STREET

SPRINGFIELD

62706

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FILE NO. S-986

BANKS AND BANKING:
Foreign Banking Office Act

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

Dear Mr. Lignoul:

This responds to your request for an opinion as to whether you may safely issue the Banco di Roma, S.p.A., a certificate of authority to establish and maintain a foreign banking office pursuant to the Foreign Banking Office Act.

(Ill. Rev. Stat. 1973, ch. 16 1/2, pars. 501 et seq.) You have not provided me with a copy of its application and it is apparent from the facts set forth in your letter that you are interested only in one specific question and that is "whether the existing legislation in this State would prohibit a parent

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bank from maintaining a subsidiary State chartered bank organized pursuant to the Illinois Banking Act and also maintaining a foreign banking office pursuant to the Foreign Banking Office Act". I will limit my opinion to advising on that question.

The Banco di Roma, S.p.A., is a bank of national interest organized and existing under the laws of the Republic of Italy and is engaged in the general banking business. The bank is also a one bank holding company under the Federal Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and as such owns all the shares, except for directors' qualifying shares, of the Banco di Roma (Chicago). On March 23, 1973, your agency issued a charter to the Banco di Roma (Chicago) and it now conducts a general banking business in Chicago.

After the Banco di Roma (Chicago) commenced business, the Foreign Banking Office Act was enacted. You further state in your letter that prior to the enactment of this legislation the only method for a foreign banking corporation to do business within the State of Illinois was to apply for a permit and organize a State chartered banking association.

Under the Foreign Banking Office Act, supra, Banco di Roma, S.p.A. is a foreign banking corporation. (Ill. Rev. Stat.

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1973, ch. 16 1/2, par. 502.05.) There are no provisions in the Foreign Banking Office Act which directly prohibit such a foreign banking corporation which has established a foreign banking office in Chicago from also owning a subsidiary bank. However, section 3 of the Act (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 503) provides in part as follows:

" * * *

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. Any such banking office shall be maintained subject to supervision and examination by the Commissioner and such reports and examinations as are required of State banks under the Illinois Banking Act applicable to such banking office."

This section subjects a foreign banking corporation, and not simply the foreign banking office of such corporation, in the conduct of its business in this State to the Illinois Banking Act (Ill. Rev. Stat. 1973, ch. 16 1/2, pars. 101 et seq.), and states that such corporation shall have the same, but no greater, rights and privileges than a State bank.

The question then to be considered is whether a State chartered bank could own a subsidiary bank doing business in Illinois. It is well established in Illinois law that the

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powers vested in a bank are only those which are expressly granted or necessarily implied from a specific grant. (Knass v. Madison & Kedzie State Bank, 354 Ill. 554; Smyth v. Kaspar Amer. State Bank, 9 Ill. 2d 27.) There is no provision in the Illinois Banking Act which grants power to a State chartered bank to own shares of stock in a corporation which is engaged in the general banking business in Illinois. Those corporations in which a bank is authorized to own stock are limited. See subparagraphs (8), (9), (10), (11), and (12) of section 5 of the Act. (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 105.) Subparagraph (12) of section 5 relates directly to the owning of subsidiary corporations and provides in pertinent part as follows:

"§ 5. General Corporate Powers.) A bank organized under this Act or subject thereto shall be a body corporate and politic and shall, without specific mention thereof in the charter, have all the powers conferred by this Act and the following additional general corporate powers:

* * *

(12) To own, possess and carry as assets stock of one or more corporations all the stock of which (except for qualifying shares of directors to the extent, if any, required by applicable law) is owned by it and which is or are engaged solely in one or more of the following businesses:

(a) Holding title to and administering assets acquired by the bank as a result of the collection or liquidating of, loans, investments or discounts; or

(b) Holding title to and administering personal property acquired by the bank, directly or indirectly through such a subsidiary, for the purpose of leasing to others, provided such lease or leases and the investment of the bank, directly or through such subsidiary in such personal property otherwise comply with Section 35.1 of this Act; or

(c) Carrying on or administering any of the activities excepting the receipt of deposits or the payment of checks or other orders for the payment of money in which the bank engages in carrying on its general banking business; provided, however, that nothing herein contained shall be deemed to permit a bank organized under this Act or subject hereto to do, either directly or indirectly through any such subsidiary, any act including the making of any loan or investment or to own, possess or carry as assets any property which if done by or owned, possessed or carried by the state bank would be in violation of or prohibited by any provision of this Act; and without limiting the foregoing no such subsidiary shall maintain in this State any office or agency for the purpose of conducting any of its business at any other place than a place at which the bank of which it is a subsidiary would be permitted to conduct such business if such business was being conducted by the bank directly rather than through such subsidiary. The provisions of this paragraph shall not apply to and shall not be deemed to limit the powers of a state bank with respect to the ownership, possession and carrying of stock which a state bank is permitted to own, possess or carry under this Act.

* * *

This section permits a bank to own subsidiaries, but for only a very limited number of purposes. None of those limited purposes includes carrying on a general banking business in Illinois. It is apparent that this provision is carefully drawn to preclude a bank from owning a subsidiary

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corporation engaged in the general banking business in Illinois.

It has long been the public policy of Illinois that banks could not own stock of another bank. (Flanagan v. First Nat. Bank of Chicago, 307 Ill. App. 495, 502.)

This is but part of the public policy of this State which favors the independence of unit banks (Bank Holding Company Act of 1957, Ill. Rev. Stat. 1973, ch. 16 1/2, pars. 71 et seq.) and prohibits domestic branch banking. Section 6 of the Illinois Banking Act, Ill. Rev. Stat. 1973, ch. 16 1/2, par. 106.

I am, therefore, of the opinion that since an Illinois chartered bank may not own stock in a subsidiary domestic banking corporation, a foreign banking corporation which maintains a banking office under the Foreign Banking Office Act is similarly prohibited from owning a subsidiary State chartered bank organized under the Illinois Banking Act. This opinion is concerned only with the rights, privileges, duties and liabilities of a foreign banking corporation as it conducts its business in Illinois, for section 3 of the Foreign Banking Office Act, supra, limits such foreign

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banking corporations only as to the conduct of its "banking
business in this State".

Very truly yours,

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