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SPRINGFIELD



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FILE NO. S-1166

**FINANCIAL INSTITUTIONS:**  
Definition of a Bank  
Holding Company

Richard K. Lignoul  
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Springfield, Illinois 62701

Dear Mr. Lignoul:

This responds to your letter requesting my opinion as to whether First Ogden Corporation of Naperville, Illinois, and Heritage Bancorporation of Chicago are operating as bank holding companies in violation of The Bank Holding Company Act of 1957. (Ill. Rev. Stat. 1975, ch. 16 1/2, pars. 71 et seq.) In my opinion they are not.

Section 3 of The Bank Holding Corporation Act of 1957 (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 73) provides in pertinent part that:

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"It shall be unlawful (1) for any action to be taken hereafter which results in a company becoming a bank holding company as defined in this Act;

\* \* \*

A "bank holding company" is defined by section 2 of the Act

(Ill. Rev. Stat. 1975, ch. 16 1/2, par. 72) to be:

"\* \* \* [A]ny company (1) which directly or indirectly owns or controls 15 per centum or more of the voting shares of each of two or more banks or of a company which is a bank holding company by virtue of this Act, or (2) which controls in any manner the election of a majority of the directors of each of two or more banks, or (3) for the benefit of whose shareholders or members 15 per centum or more of the voting shares of each of two or more banks or a bank holding company is held by trustees.  
\* \* \*

In response to your question I note initially that neither First Ogden Corporation nor Bancorporation owns as much as 6% of the voting shares of any of its client banks. Heritage Bancorporation in fact owns no stock in any bank. As I indicated in my opinion No. S-1049, issued February 26, 1976, however, this does not necessarily eliminate the possibility that a corporation is in fact operating as a "bank holding company" as the term is defined in section 2(c)(1) of The Bank Holding Company Act of 1957. In certain

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circumstances the bank stock owned by the officers and directors of a corporation may be said to be "indirectly controlled" by the corporation within the meaning of section 2(c)(1). In order to determine whether that is the case here, it is necessary to examine the relationship of First Ogden Corporation and Heritage Bancorporation to their respective client banks.

Based on the information supplied me by your office, it appears that in all instances this relationship is strictly a contractual one. Both corporations, directly and through their subsidiaries, supply their clients with a variety of technical services, including but not limited to, auditing, data processing, credit investigation, financial planning and investment assistance. Charges for these services are apparently made in accordance with standard fee schedules at competitive rates.

In addition to the foregoing, Heritage Bancorporation offers what it calls "licensing services" under the "Heritage Agreement and License" program. The apparent purpose of this "agreement and license" is to allow independent banks to participate in joint advertising programs and thus achieve a

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stronger market identity than would otherwise be possible for a single bank. In exchange for the payment of a royalty to Heritage, a participating bank is licensed to use the company's registered trademark and the word "Heritage" in its name. Licensed banks also become members in the National Association of Heritage Banks, an organization controlled by member banks and designed to promote the growth of the Heritage Bank System.

A comparison of these facts with those discussed in opinion No. S-1049, concerning the proposed activities of Madison Financial Corporation, reveals significant differences. Madison Financial Corporation was sole owner (less directors' qualifying shares) of Madison Bank & Trust Company. Certain of Madison Financial's officers and directors had undertaken to organize Madison National Bank of Niles and Madison Financial Corporation proposed to acquire 14.9% of the shares of the new bank. Another 27.4% or more of Madison National stock was to be purchased by persons who were officers and directors of Madison Financial Corporation and/or its wholly owned subsidiary, Madison Bank & Trust Company. In its

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application to the Federal Reserve Bank of Chicago, Madison Financial Corporation stated that it sought to acquire stock in Madison National Bank in order to form a "subsidiary relationship" and that it planned to provide the new bank with certain "management services", including: "[The] establishing of policies and the general supervision of the Madison National Bank of Niles' operation."

Based on these factors, I concluded that Madison Financial Corporation intended to use the interest it acquired in the shares of Madison National Bank, together with the shares purchased by its own officers and directors and those of its subsidiary, Madison Bank and Trust Company, to control the policies and operation of the new bank. Viewed realistically, the stock acquisition plan proposed by Madison Financial Corporation involved a clear threat to the ability of Madison National Bank to operate as an independent banking unit. I therefore advised that the shares in Madison National Bank owned by the officers and directors of Madison Financial Corporation and Madison Bank & Trust Company were "indirectly controlled" by Madison Financial Corporation for purposes of section 2(c)(1) of The Bank Holding Company Act of 1957.

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First Ogden Corporation and Heritage Bancorporation on the other hand, although they provide various technical services to their client banks and advise bank management, do not appear to seek an active role in the decision-making process of their client banks. Neither First Ogden Corporation nor Heritage Bancorporation has the sort of "subsidiary relationship" with its client banks that Madison Financial Corporation sought to establish with Madison National Bank. Given this fact, the stock owned by officers and directors of First Ogden Corporation and Heritage Bancorporation presents no threat to the ability of these corporations' client banks to operate as independent banking units. I, therefore, am of the opinion that this stock is not "indirectly controlled" by First Ogden Corporation and Heritage Bancorporation for purposes of section 2(c)(1) of The Bank Holding Company Act of 1957.

Furthermore, after carefully examining the materials you have supplied me regarding the operations of First Ogden Corporation and Heritage Bancorporation, I could find nothing indicating that either corporation comes within the alternative definitions of a bank holding company found in subsec-

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tions (2) and (3) of section 2 of The Bank Holding Company Act of 1957.

It is therefore my opinion that the activities of First Ogden Corporation and Heritage Bancorporation, as described in the materials you have submitted, do not violate The Bank Holding Company Act of 1957.

Very truly yours,

A T T O R N E Y   G E N E R A L