

DOB OPINION 96-005

Date: August 19, 1996

From: John L. Bley, Director, Department of Financial Institutions

Subject:

Concerning the powers of a Title 32 RCW savings bank relative to federal and state-chartered savings and loans and commercial banks.

You have requested an opinion from this office concerning the powers of a Title 32 RCW savings bank relative to federal and state-chartered savings and loans and commercial banks. Subject to the limitations expressed herein, it is the Department's opinion that Title 32 savings banks may exercise all the powers and authorities of savings and loan associations and commercial banks.

Taken as a whole, Title 32 RCW contains many provisions relating to powers. As the Supreme Court of the state of Washington noted in 1979, Title 32 RCW savings banks also have all incidental powers that are "convenient and useful" to the exercise of their express powers. *Washington Bankers Association v. Washington Mutual Savings Bank*, 92 Wn.2d 453 (1979). Amendments of Title 32 RCW since 1979 have further broadened the powers of such savings banks, consistent with the broad legislative policy of enabling such institutions to adapt to the rapidly changing marketplace for financial services and to serve the public more effectively. The cumulative effect of such provisions is to grant to Title 32 RCW savings banks essentially the same powers as federal and state-chartered savings and loans and commercial banks, among others.

For example, one such provision, RCW 32.08.142, has granted Title 32 RCW savings banks parity with federal savings banks and federally-chartered savings and loan associations since 1981. In 1985, 1994, and 1996, the nature and scope of this grant of parity powers under the laws of Washington was extended, clarified and elaborated. Under RCW 32.08.142 as most recently (effective on June 9, 1996) amended by 1996 Laws of Washington Chapter 2 (the "1996 Act"), Title 32 RCW savings banks have the powers and authorities that a federal savings bank had on July 28, 1995, or a subsequent date not later than June 9, 1996. According to its plain language, this provision of Washington law is an authorization for mutual savings banks to exercise parity powers and authorities "in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state." The full scope of such other powers and authorities is beyond the scope of this letter, but includes loan and investment powers such as authorizations for loans and investments under RCW 32.20.415 and RCW 32.20.460.

Another provision, RCW 32.08.146 (as amended by the 1996 Act), grants Title 32 RCW savings banks parity with the powers of future federal savings banks and their successors. Under this provision, this grant of power is to become effective when the Director of the Department of Financial Institutions makes certain findings.

Yet another provision, RCW 32.08.140(15), authorizes a Title 32 RCW savings bank to “exercise any other power or authority permissible under applicable state or federal law exercised by other savings banks or by savings and loan associations with branches in Washington” under certain circumstances. Although the primary purpose of the 1996 Act was to establish new guidelines for interstate banking in Washington, the plain language of this section includes Title 33 savings institutions. Moreover, a legislative objective, evident in several powers provisions of the 1996 Act, is to prepare Washington state-chartered savings banks for interstate competition with their bank and non-bank competitors. The exercise of powers and authorities permissible under Title 33 RCW is entirely consistent with this legislative objective. Accordingly, it is my conclusion that the powers granted under RCW 32.08.140(15) include powers exercised by Title 33 RCW savings and loan associations, as well as powers exercised by foreign savings and loan associations with branches in Washington, if the other requirements of RCW 32.08.140(15) are satisfied.

Although RCW 32.08.140(15) grants only powers that have actually been exercised, the extent of such grant is not limited “to the extent that” a competing institution exercises such powers. Therefore, any actual exercise of powers at any time by a competing institution may be a sufficient basis for the exercise of such powers by Title 32 savings banks.

Another provision of the 1996 Act, RCW 32.08.140(17), specifically empowers Title 32 RCW savings banks to “exercise the powers and authorities that may be carried on by a subsidiary of the mutual savings bank that has been determined to be a prudent investment pursuant to RCW 32.20.380.” The provision previously discussed, RCW 32.08.140(15), overlaps with RCW 32.08.140(17), except to the extent that the former authorizes Title 32 RCW savings banks to exercise powers or authorities of a savings institution that would not be a prudent investment pursuant to RCW 32.20.380. *Cf.* RCW 32.20.445 (authorizing investment in stock of federally insured savings institutions, without requiring that such investment be prudent).

The requirement that such powers be the kind of powers that may be exercised by a subsidiary in which a Title 32 RCW savings bank may prudently invest is the only limitation in RCW 32.08.140(17). This provision does not require, for example, that power in question belong to a subsidiary in which the Title 32 RCW savings bank has actually invested, but only that the power in question “may” be exercised by a subsidiary of the kind that is a prudent investment under RCW 32.20.380. The grant in RCW 32.08.140(17) is cumulative with the grants in various other provisions of the law of Washington, such as RCW 32.20.415 and RCW 32.20.460, that grant powers and authorities to Title 32 RCW savings banks.

In exercising any power under RCW 32.08.140(17), however, a Title 32 RCW savings bank may not conduct its activities in an unsafe or unsound manner. The Department of Financial Institutions (“DFI”) will review activities conducted pursuant to RCW 32.08.140(17) on a case-by-case basis. Consistent with safety and soundness, in such review the DFI will determine whether such activities are being conducted in compliance with applicable laws and regulations. Imprudent concentrations of risk may be subject to criticism in a report of examination, and may result in a lower composite CAMEL rating. Finally, if such activities lower the CAMEL rating to an unacceptable level, supervisory action limiting such activities will result.

This policy appears prudent in that it focuses regulatory attention on institutions that abuse these broad powers and authorities but affords well-run institutions an opportunity to serve more effectively the consuming public.

Should you have any questions concerning this letter, please contact the undersigned.