

DOB OPINION 96-007

Date: September 19, 1996

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

Subject:

Ruling With Respect to Trust Assets Held by Trust Company Taken Over By the Director of Financial Institutions.

You have requested an opinion from Mr. Zachary as follows:

In the event that the Director of the Department of Financial Institutions (the “Director”) exercises his authority to take possession of a trust company in the case of insolvency, will the Director use assets in segregated accounts held in trust by the trust company, as trustee under a trust agreement, to satisfy obligations owing to the creditors of the trust company which obligations do not arise from the trust company’s exercises of its rights or duties as trustee with respect to the trust assets?

You have asked us to assume the following:

1. Acme Trust Company (“Acme”) serves as trustee of the Smith Family Trust and holds the Smith Family Trust assets in trust in segregated accounts (the “Trust Assets”);
2. Acme has obligations owing to creditors (“Creditors”) which obligations are unrelated to and do not grow out of Acme’s duties or rights as trustee of the Smith Family Trust;
3. The Director takes possession of Acme pursuant to its authority under RCW 30.44 et seq.; and,
4. The Director establishes a plan by which it will satisfy the Creditors of Acme.

Based on your letter requesting our opinion, and upon the facts you have asked us to assume, it is our opinion that:

Upon taking possession of a trust company pursuant to his statutory authority, the Director would not and could not take trust assets held by the trust company as trustee in a segregated trust account and apply such trust assets to satisfy obligations owing to creditors of the trust company, provided that the obligations do not arise out of the trust company’s duties as trustee of the trust assets.