

DOB OPINION 99-002

Date: December 22, 1999

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

Subject:
State of Washington's jurisdiction over a bank's Internet website

By letter dated November 9, 1999 you inquired whether the state of Washington would assert jurisdiction over your bank's interactive Internet website. Based on the facts as described below, we have concluded that the state of Washington does not have jurisdiction over your website.

Your bank is proposing "to conduct banking, mortgage brokering, and mortgage lending services via the Internet." Its primary business will be to provide "banking services including, but not limited to, checking and savings accounts, certificates of deposit, and mortgage lending and brokering, to Washington residents. The bank's focus is to conduct business over the Internet with customer support via telephone, fax, e-mail, and mail." The bank does not intend to operate out of a physical location in the state of Washington. Your bank is an FDIC insured industrial loan company chartered under Divisions 7 of the California Financial Code.

RCW 30.04.010(1) defines banking as including "the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business." RCW 30.04.020(2) prohibits a foreign corporation whose name contains the word bank or whose articles of incorporation empower it to engage in a banking or trust business from engaging in that banking or trust business in this state unless the corporations (a) is expressly authorized to do so under this title...

In order for a Washington resident to avail itself to your services, the Washington resident must take the affirmative act of clicking onto your website. In essence, the Washington resident is coming to you, you are not coming to the Washington resident. We find particularly persuasive that you will have no physical presence in the state of Washington and that RCW 30.04.020 only prohibits banking activities "in the state of Washington." As a result, it is our conclusion that your bank will not be conducting a banking business "in the state of Washington."

To hold otherwise creates significant practical difficulties. We do not believe it was the legislature's intent for the Washington State Department of Financial Institutions to impose cease and desist orders on all bank interactive websites throughout the country unless such banks complied with our rules of entry RCW 30.04.280, RCW 30.38.010. We will, therefore, not imply such jurisdiction based on a current reading of the statutes. Different facts may cause different conclusions. Should you have any questions, please contact the undersigned.