



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

December 5, 2005

Interpretive Letter #1045
December 2005
12 USC 29

Re: Authority to Own Premises for Bank Personnel and Visitors

Dear []:

This is in response to your inquiry, on behalf of [*Bank, City, State*] (“Bank”), concerning the authority of national banks to own real estate necessary for the transaction of business. For the reasons discussed below, we conclude that the Bank’s proposed development of a hotel to provide lodging for the Bank’s out-of-area visitors qualifies as bank premises and, therefore, is permissible under 12 U.S.C. § 29.

Factual Description

The Bank is headquartered in [*City, State*], and has offices and banking centers throughout the United States. As of September 30, 2005, the Bank had the equivalent of more than 175,000 full-time employees located throughout the country. These employees, in addition to other Bank visitors – including customers, vendors, shareholders, and members of the Bank’s board of directors – routinely visit [*City*] on Bank-related business. For calendar year 2004, the Bank calculated that visiting Bank employees alone spent approximately 72,000 business nights in [*City*]. Currently, the Bank houses the visiting employees, directors, and certain other visitors in short- and long-term hotel space.

The Bank now proposes to establish a hotel to accommodate these employees and visitors. The hotel would be constructed on existing bank premises, currently used as a parking lot and adjacent to the Bank’s corporate headquarters in downtown [*City*]. The Bank would remain the sole owner of the real estate and would be the sole owner of all improvements resulting from the development. Construction is scheduled to begin in early 2006, with construction scheduled to be finished by mid-2008. The Bank would hire an independent contractor to develop and construct the building and would contract with a national hotel management company to manage the hotel.

The proposed hotel would have approximately 150 rooms. The Bank intends to use more than 50% of the occupied rooms in the hotel to lodge out-of-area Bank employees, members of the Bank's board of directors, and selected vendors, shareholders, customers, and other visitors in [*City*] on Bank-related business (collectively, "Bank Visitors"). Based on the projection that the hotel would maintain 75% occupancy, the Bank would use more than 37.5% of the total rooms in the hotel on an annual basis. The Bank may use additional rooms in the hotel; however, when not used by Bank Visitors, the remaining hotel rooms would be made available to the general public.¹

The Bank's business objectives in establishing the hotel is two-fold. First, the Bank desires to reduce its annual lodging expense for Bank Visitors and believes that it will do so by owning and using the hotel. Second, the Bank believes that the development of the hotel adjacent to its corporate headquarters and managed by an established hotel firm will improve the overall quality of experience for Bank Visitors visiting the Bank's corporate headquarters and, as a result, the desirability of working for and doing business with the Bank in [*City*].

The Bank's business decision to develop a hotel with 150 rooms is driven by two factors. First, while the Bank believes it important to provide quality hotel facilities for its personnel and visitors, it does not wish to manage such a hotel. The Bank stated that a 150 room hotel is the smallest property (in terms of number of rooms) that the hotel management company would agree to manage. Therefore, in order to fulfill the business objective of developing a quality hotel to be managed by an established hotel firm, the proposed hotel needed to be no smaller than 150 rooms. Second, the Bank expects that on a periodic basis, as a result of the Bank's normal business activities, Bank Visitors may use substantially more than 50% of the occupied rooms in the hotel. Thus, the capacity of the hotel, in terms of occupied rooms, also may serve to meet the potential peak lodging demands of Bank Visitors.

Legal Analysis

A national bank's authority to own real estate is governed by 12 U.S.C. § 29. Section 29(First) provides that a national bank may purchase, hold, and convey such real estate "as shall be necessary for its accommodation in the transaction of its business." Consistent with section 29, the bank's activities must be conducted in good faith, that is, for banking purposes and not in a speculative manner.

Real estate necessary for the accommodation of a bank's business includes real estate other than that upon which bank office buildings are located. *See* 12 C.F.R. § 7.1000.² Because

¹ The Bank is authorized to invest in bank premises under 12 U.S.C. § 371d and 12 C.F.R. § 5.37. The Bank does not need to file an application or notice with the OCC because its aggregate investment in bank premises does not approach the amount of the Bank's capital stock and surplus. *See* 12 U.S.C. § 371d(a)(2) and 12 C.F.R. § 5.37(d)(1). As of June 30, 2005, the Bank's aggregate investment in bank premises was approximately \$6.7 billion, and the Bank's capital and surplus was approximately \$102 billion.

² Section 7.1000(a)(2) lists examples of types of real estate that national banks permissibly may hold under 12 U.S.C. §29 (First). These examples include property for the temporary lodging of bank employees, officers, and customers where suitable commercial lodging is not readily available if the

providing lodging for Bank Visitors, and doing so in a cost-efficient manner, is a legitimate business concern for the Bank, we believe the proposed hotel would fall within the meaning contemplated by section 29(First).³

The limitations of section 29 are designed “to keep the capital of the banks flowing in the daily channel of commerce; to deter them from embarking in hazardous real estate speculations; and to prevent the accumulation of large masses of such property in their hands”⁴ The Bank’s ownership of the hotel will not offend these policies. In recognizing the authority of national banks to maximize the utility of bank premises, the court in *Brown v. Schleier* stated:

When an occasion arises for an investment in real property for either of the purposes specified in the statute, the national bank act permits banking associations to act as any prudent person would act in making an investment in real estate, and to exercise the same measure of judgment and discretion. The act ought not to be construed in such a way as to compel a national bank, when it acquires real property for a legitimate purpose, to deal with it otherwise than a prudent landowner would ordinarily deal with such property.⁵

Once the hotel is completed, the Bank projects it would use more than 50% of the occupied rooms in the hotel and on occasion may use a substantial greater percentage of the occupied rooms. This level of usage exceeds what has been expressly permitted in the case law on bank premises.⁶ If the Bank were to develop an office building instead of a hotel, there would be no question that the building, with the level of occupancy proposed by the Bank, would be permissible bank premises under section 29. Therefore, we believe that the Bank may make the remaining rooms available to third parties in order to maximize the utility of its premises.⁷

property qualifies as a deductible business expense for federal income tax purposes. 12 C.F.R. § 7.1000(a)(2)(v). The Bank is not relying on any of the examples listed in section 7.1000(a)(2). However, that exemplary list is non-exclusive, 60 F.R. 11924, 11925 (March 3, 1995) (preamble to proposed rule) and 61 F.R. 4849, 4850 (Feb. 9, 1996) (preamble to final rule), and for the reasons described herein, we believe that the proposed hotel would be permissible bank premises under section 29(First).

³ OCC Interpretive Letter, dated January 21, 1993 (to be published) (given scarcity and cost of other commercial lodging, bank may maintain residential condominium for use of outside consultants, auditors, and customers).

⁴ *Union Nat’l Bank v. Matthews*, 98 U.S. 621, 626 (1878).

⁵ *Brown v. Schleier*, 118 F. 981, 984 (8th Cir. 1902), *aff’d*, 194 U.S. 18 (1904).

⁶ *See, e.g., Wingert v. First Nat’l Bank*, 175 F. 739 (4th Cir. 1909), *appeal dismissed*, 223 U.S. 670, 672 (1912) (upholding bank’s authority to tear down bank building and construct new six story office building in which bank will occupy only first floor, or 16.7% of structure); *Wirtz v. First Nat’l Bank & Trust Co.*, 365 F.2d 641, 644 (10th Cir. 1966) (recognizing bank’s authority to occupy 20.7% of office complex and lease remaining space as excess premises).

⁷ OCC Interpretive Letter, dated July 8, 1993 (to be published) (national bank that permissibly maintains residential condominium as lodging for use of visiting auditors, consultants, and customers may rent condominium when not being used by such visitors as means of offsetting lodging’s expenses).

Conclusion

Based upon the information and commitments provided by the Bank, we find that the Bank permissibly may develop the proposed hotel to provide lodging for the Bank Visitors. If you have any questions, please contact Steven Key, Senior Attorney, Bank Activities and Structure Division, at 202-874-5300.

Sincerely,

signed

Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel