Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

May 19, 1998

Interpretive Letter #830
June 1998
12 U.S.C. 29
12 CFR 34.83(a)

Dear [ ]:

This is in response to your letter of May 1, concerning a real property lease of the premises known as the [ ] at [ ] Boulevard, [*City, State*]. Your bank leased the property for a twenty-five year term from [ ], commencing on January 1, 1965. The lease included two successive options to extend for ten years each. [ ] subsequently sold the property to [ ] (" *Co.* "), who is now the owner-lessor.

The bank occupied the premises as a branch office during the twenty-five year term, and renewed for another ten years in 1990. In January 1994 the bank decided to close the branch, in part due to severe earthquake damage. It proposed to assign the lease to [*Inc.*], but [*Co.*] refused to give its permission. So instead the bank subleased the premises to [*Inc.*] for the remainder of the lease.

The current lease term expires on December 31, 1999, and can be extended for one more ten-year term by exercise of the second extension option. The sublease between the bank and [*Inc.*] provides that if "it is then legal for Sublessor [i.e., the bank] to do so," upon stated conditions the bank will "assign to the Sublessee, or exercise on behalf of Sublessee, Sublessor's right under the Master Lease for an additional period of ten (10) years, in which event the Term of this Sublease will be extended …."

You have inquired whether the bank would lawfully be able to exercise sometime prior to December 31, 1999, the second extension option, i.e., the option to renew the lease term for an additional ten years. The bank, in other words, would be the sublessor, and [*Inc.*] the sublessee, for another ten years after December 31, 1999.

It is my opinion that such an extension of the lease for a new ten year period commencing on January 1, 2000, by the bank, would not be legal under 12 U.S.C. 29 and the OCC's implementing regulation, 12 C.F.R. Part 34, Subpart E ("Other Real Estate Owned"). The

statute provides that a national bank shall "hold … real estate" only if the real estate is necessary for its accommodation in the transaction of its business, or is acquired for debts previously contracted. The property in question was leased as bank premises until January 1994, and so qualified as a permissible holding. When the bank vacated the property with no intention of ever again using it as a branch office, the property became "other real estate owned," *see* 12 C.F.R. 34.81(c) and (e) (defining OREO to include former banking premises).

Twelve U.S.C. 29 provides that a national bank must dispose of OREO property within five years, or with OCC approval within up to an additional five years. The former branch became OREO in January 1994, and at that time the bank subleased the property to [*Inc.*] for the remainder of the lease term, which ends on December 31, 1999.

By this action, the bank "disposed" of the property for purposes of 12 U.S.C. 29 and 12 C.F.R. 34.83. The OCC's OREO regulation provides that a national bank may comply with its obligation to dispose of real estate in a number of ways. In the case of a lease, one way to dispose of the property is to enter into a "coterminous sublease," i.e., a sublease that runs to the end of the lease term. 12 C.F.R. 34.83(a)(3). That is what your bank did in 1994. Having disposed of the OREO property in this way, there is no legal basis under 12 U.S.C. 29 or the OREO regulation for the bank to enter into a new ten year lease term beginning on January 1, 2000, for the purpose of entering into a new sublease to [*Inc.*] for the same duration.

I trust that this reply is responsive to your inquiry.

Very truly yours,

/s/

William B. Glidden
Assistant Director
Bank Activities and Structure Division

[12 U.S.C. 29E2]