

April 3, 2009

Re: Interpretive Letter 1-2009 Application for Exemption under
Section 362.106(4), RSMo Supp 2008

In a letter dated March 13, 2009, on behalf of your client, you requested a determination from this office that would permit Missouri state-chartered banks to increase the aggregate debt or equity investment in projects which promote public welfare, including community development projects, up to fifteen percent of unimpaired capital and surplus (defined in 12 CFR Section 24.2), which is the same level permitted to certain national banks. You cited 12 USC 24 (Eleventh), OCC Bulletin 2006-44 and OCC Bulletin 2008-22, both issued by the Comptroller of the Currency (OCC), which authorize this level of investment for national banks provided conditions are met.

Under Section 362.106(4)(e), RSMo Supp 2008¹, state-chartered banks may conduct any activity that national banks are expressly authorized to conduct, if the Missouri bank has provided notice to the Director of Finance who determines within the 30 day notice period, that the proposed activity is not unsafe or unsound and the bank meets the conditions prescribed for national banks. The director may either take no action or issue an interpretive letter that specifically describes the activity permitted and any limitations on the activity.

¹ All state statutory citations are to the 2008 Supplement to the Revised Statutes of Missouri, unless otherwise indicated.

National Bank Authority

Prior to enactment of the Financial Services Regulatory Relief Act (FSRRA) in 2006, national banks were allowed to invest in aggregate up to five percent of the bank's unimpaired capital and surplus in public welfare investments (defined in 12 CFR Section 24.6 as those designed primarily to promote the public welfare, by benefiting low and moderate income communities or families) without prior OCC approval. FSRRA changed and expanded the authority for national banks to directly or indirectly make public welfare investments under 12 USC Section 24 (Eleventh) up to an additional ten percent (fifteen percent total) of capital and surplus, provided the bank made written request to do so, and the OCC determined in writing that the additional investment would (1) not pose undue risk to the deposit insurance fund and (2) the investing national bank was at least adequately capitalized. If the OCC grants written approval for the bank to invest beyond the five percent limit, an after-the-fact notice is required to be filed with the OCC in accordance with 12 CFR Section 24.5, within ten days, for each investment made above the five percent limit.

In no event is the aggregate public welfare investment allowed to exceed fifteen percent of the bank's unimpaired capital and surplus. In addition, no such investment is allowed that would expose the bank to unlimited liability and the investment cannot involve properties carried on the bank's books as Other Real Estate.

Missouri Authority

Under Missouri law, Section 362.106(4)(e), upon approval of the Director of the Division of Finance, a Missouri bank may conduct any activity that a national Bank is authorized to conduct if it meets prescribed standards applicable to a national bank in exercising such power and satisfies any limitations imposed regarding such activity. In granting approval, the director must also determine that the proposed activity is not an unsafe or unsound practice and that the bank meets the prescribed standards for conducting such activity.

Under current state law, Section 362.105.1(15), a Missouri bank is permitted to make debt or equity investments in corporations or projects to promote community development and its welfare, provided the aggregate of the investment in all such corporations or projects does not exceed five percent of the bank's unimpaired capital. This limit does not apply to loans made under the authority of other provisions of state law. In addition, 20 CSR 1140-2.067(2)(A)

limits the investment in any one community development project to no more than two percent of the bank's unimpaired capital (which is defined to include common and preferred stock, undivided profits, surplus and allowance for loan and lease losses).

12 USC Section 24 (Eleventh), states the OCC shall limit an association's investment in any one project and its aggregate investment under this paragraph. Federal law allows a national bank to directly or indirectly invest in aggregate, up to five percent of unimpaired capital and surplus in public welfare investments and provides for the level of investment to be increased up to an aggregate of fifteen percent of unimpaired capital and surplus provided the investment does not pose undue risk to the deposit insurance fund, the investing bank is at least adequately capitalized and the investment would not expose the bank to unlimited liability.

The implementing federal regulations, 12 CFR Section 24 contain guidelines and ongoing procedures that must be followed in order for national banks to invest beyond the five percent aggregate limit.

SUMMARY & FINDINGS

In granting approval pursuant to Section 362.106(4)(e), the director must determine that the proposed activity is not an unsafe or unsound practice and that the bank meets the prescribed standards for conducting such activity.

The standards for national banks who apply to increase their aggregate investment in public welfare projects, up to a maximum of fifteen percent of unimpaired capital and surplus, are that the investment cannot pose undue risk to the insurance fund, the investing bank must be at least adequately capitalized and that the investment would not expose the bank to unlimited liability.

Your client, is adequately capitalized, and therefore meets one of the criteria for national banks requesting approval to invest in aggregate up to fifteen percent of capital in public welfare or community development projects. We are not aware of any information that indicates the additional investment poses undue risk to the deposit insurance fund. By supplement to your letter of March 13, 2009, you certified that this additional investment in public welfare projects will not expose the bank to unlimited liability. The proposal to engage in the requested activity is consistent with federal standards applicable to national banks.

Your client, has a history of investing in public welfare projects and the director finds that the proposed additional investment, up to a maximum of fifteen percent of unimpaired capital, in aggregate, would not be an unsafe or unsound practice under state law. By supplement to your letter of March 13, 2009, you certified that with this additional investment, the bank will remain in compliance with the limits for any one community development project to not exceed two percent of capital as stated in 20 CSR 1140-2.067(2)(A), or in the alternative, the bank will meet the conditions stated below in order to allow the individual investment limit in one single project to be as high as five percent of unimpaired capital.

The Deputy Commissioner hereby determines that the bank's investment in the aggregate of up to fifteen percent of the bank's unimpaired capital, authorized for national banks under 12 USC Section 24 (Eleventh), is not an unsafe or unsound practice for Missouri banks provided that they meet conditions set forth below. To the extent the activity is not exercised consistently with the limitations set forth in this letter, the Deputy Commissioner determines it to be an unsafe or unsound practice, and, therefore, unauthorized under Section 362.106(4).

All Missouri chartered banks may invest in aggregate, up to fifteen percent of unimpaired capital in public welfare or community development projects and within this amount, no more than five percent of unimpaired capital may be invested in any one project provided the following conditions are met:

1. The bank maintains a composite CAMELS rating of "1" or "2" based on the most recent state or federal regulatory examination. Should the bank not meet this criteria, the limit for aggregate and individual investment in public welfare or community development projects defaults to that stated in Section 362.105.1(15) and 20 CSR 1140-2.067(2)(A).
2. The bank is "well capitalized" as defined by 12 CFR Section 6.4 and as measured by Reports of Condition that are filed and reviewed quarterly. Should the bank not meet this criteria, the limit for aggregate and individual investment in public welfare or community development projects defaults to that stated in Section 362.105.1(15) and 20 CSR 1140-2.067(2)(A).

3. The bank is not a denovo institution (less than three years old). Should the bank not meet this criteria, the limit for aggregate and individual investment in public welfare or community development projects defaults to that stated in Section 362.105.1(15) and 20 CSR 1140-2.067(2)(A).
4. The investment does not expose the bank to unlimited liability.
5. The investment does not involve properties carried on the bank's books as Other Real Estate.
6. In granting this authority in no event shall the bank's aggregate investment in public welfare or community development projects be allowed to exceed fifteen percent of unimpaired capital.

This letter will be filed today with the Office of the Missouri Secretary of State and posted on the public internet website of the Division of Finance. It will become effective ten days after filing with the Secretary of State. If you have any questions regarding this matter, please contact James R. McAdams, General Counsel for the Department of Insurance, Financial Institutions, and Professional Registration.

Very truly yours,



Richard J. Weaver
Deputy Commissioner

RJW/DH/rmt