



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of General Administration, Division of Banking

- Permanent Rule
 Emergency Rule

(1) Date of adoption: May 2, 1990

(2) Purpose: These rules and regulations are intended to administer and interpret the provisions governing the authority of state-chartered commercial banks and trust companies to act as general insurance agents pursuant to the provisions in RCW 30.04.215(1), 30.08.140(10), and 30.08.150(3).

(3) Citation of existing rules affected by this order:

Repealed: None
Amended: None
Suspended: None

(4) Authority for adoption:

Statute: RCW 30.04.030
Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 89-24-063 on December 5, 1989 (date).

Describe any changes other than editing from proposed to adopted version: The definition of "city" was changed to assure clarity. The word "general" in the phrase "general insurance agent" has been deleted to avoid ambiguity since "general insurance agent" is not defined in the rule but "insurance agent" is defined in the rule. The term branch in the definition of (over)

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If yes, explain: See "Supplementary Information" sheet which is attached to this Order.

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
 Other (specify) _____ *

Emergency Rules

- Immediately
 Later (specify) _____

* (if less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAY 02 1990

TIME: 11:10 AM
WSR: 90-10-074

NAME (TYPE OR PRINT)

Thomas H. Oldfield

SIGNATURE

Thomas H. Oldfield

DATE

5/2/90

Supervisor of Banking

Rev: 4/30/1990

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1989, the Supervisor of Banking, acting on a formal request of the Washington Bankers Association ("WBA") pursuant to RCW 34.05.330, filed a notice of proposed rule making ("Proposed Rule") interpreting three provisions of the Revised Code of Washington ("RCW") concerning the scope of insurance agency activities of state-chartered commercial banks. The three provisions were: (1) the small town exception in RCW 30.08.140(10), (2) the trust powers "agent for any purpose" provision in RCW 30.08.150(3), and (3) the federal parity provision in RCW 30.04.215(1). The WBA asserted that "(a)s a result of the lack of undefined terms in the small town exception... and the 'agent for any purpose' provision... uncertainty regarding the scope of these provisions have become evident and pose severe anti-competitive consequences for both state chartered banks and Washington consumers." Letter from Mr. Keith S. Hopper, Staff Counsel, Washington Bankers Association, to Mr. Thomas H. Oldfield, Supervisor of Banking, dated October 23, 1989.

The Washington state banking statutes have for many years authorized banks to act as insurance agent under certain circumstances. However, the scope of this authority is uncertain. The Proposed Rule clarifies the scope of a bank or trust company's authority to conduct insurance agency activities. The small town exception authorizes a bank located in a city of less than 5,000 inhabitants to act as insurance agent. However, key terms and phrases regarding the scope of this activity are not defined in statute. The Proposed Rule defines these key terms and authorizes a bank to conduct insurance agency activities, subject to the limitations and requirements of the Washington insurance code, through a full service branch of the bank provided the branch is located in a city of less than 5,000 inhabitants. The Proposed Rule also interprets a provision in the trust powers statute authorizing a trust company to act as agent for any purpose. The plain meaning of the phrase "for any purpose" includes the authority to act as insurance agent. The proposed rule also interprets certain provisions of the federal parity statute, incorporating certain provisions of the Garn-St. Germain Depository Institutions Act of 1982, P.L. 97-320.

Public Comment:

The Supervisor invited public comment on the Proposed Rule. The Supervisor has received thirty-five written comments regarding the Proposed Rule. A public hearing was conducted on January 9, 1990. Nineteen commentators expressed their views at the public hearing.

Those favoring the Proposed Rule asserted that the rule was pro-competition, pro-consumer, and pro-equity. Commentators asserted that banks have the potential to be more efficient distributors of insurance than the traditional agency system because of a bank's branch network, advanced automation, and the ease of collecting premiums through pre-authorized deductions from bank accounts. The commentators asserted that this greater efficiency results in better service levels at lower cost. Other commentators emphasized the fact that other depository institutions such as federal and state savings and loan associations, state savings banks, federal and state credit unions and national banks had already entered the market and that the Proposed Rule would only serve as a clarification of the conditions under which state chartered commercial banking institutions could enter the market. These commentators emphasized that no significant abuses of anti-competitive or consumer protection laws have occurred by financial institutions who are presently engaged in insurance agency activities. Finally, comments in the form of legal memoranda from counsel for banking companies and an informal opinion from the state Attorney General's office supporting the Supervisor's legal authority to administratively interpret the statutory provisions at issue in this Proposed Rule were received.

Those opposing the Proposed Rule supported the continued separation of insurance and banking. Commentators asserted that banks, which receive a vast majority of their operating funds from federally insured deposits, require special protection. They emphasized that the risks associated with the sale of insurance is great and the deposit insurance fund requires the protection afforded by prohibiting non-banking related activities. Others were concerned about the possibility that banks may illegally tie credit arrangements to the sale of insurance products. Others were concerned about bankers' general lack of expertise regarding the state regulation of insurance sales. Others objected to the Supervisor's legal authority to promulgate the Proposed Rule.

Significant Issues:

1. Is a bank "located in a city" if a full service certificated branch of the bank is operating within the city?
2. If the bank is located in a city by establishing a branch in the city, is the bank service area limited to that city?
3. Does a trust company's statutory authority to act as agent for any purpose include the authority to act as insurance agent?
4. Does clarification of the statutory provisions governing a state-chartered commercial bank or trust company's authority to conduct insurance agency activities facilitate the delivery of financial services to the citizens of the state of Washington?

Supervisory Findings:ISSUE #1

1. Is a bank "located in a city" if a full service certificated branch of the bank is operating within the city?

Analysis:

a. The terms "bank" and "branch bank" are defined in RCW 30.04.010. RCW 30.08.140 enumerates the corporate powers of banks, one of which is to act as insurance agent if the bank is located in a city of less than 5,000 inhabitants. A branch bank derives its authority from a bank, and is an extension of the bank's corporate entity. As a general rule, banks exercise all their powers vested in RCW 30.08.140 through their branch network. There is no statutory basis to exclude the small town exception from this general rule.

b. The apparent legislative intent to allow insurance agency activities in small communities is advanced by the interpretations in the Proposed Rule. Two possible explanations linking insurance agency powers to small communities have been asserted: (1) provide for greater availability of walk-in insurance agencies in small communities, and (2) provide for greater availability of full banking services in small communities. If the legislature intended to make insurance agencies more available to small communities, the legislative intent is advanced by the Proposed Rule. The legislature may have wanted to encourage banks to deliver full banking services to small communities. To encourage this activity, the legislature created a means whereby banks could obtain

additional revenue in the form of insurance agency revenue if it located in a small community. If the legislature intended to create an incentive for banks to deliver full banking services to small communities, the legislative intent is advanced by the Proposed Rule.

(c). The Office of the Comptroller of the Currency has adopted an almost identical interpretation of a similar provision of federal banking law. See Comptroller Staff Interpretative Letter No. 366 (August 19, 1986).

Finding:

The Supervisor finds that a bank is located in a city if the bank is operating a full service certificated branch within the city.

ISSUE #2

2. If the bank is located in a city by establishing a branch in the city, is the bank service area limited to that city?

Analysis:

a. The statute is absolutely silent with respect to any limitations upon the persons or the locale to which it may extend its insurance services. This is true with respect to all banking powers granted by RCW 30.08.140. A bank having been granted a statutory power, exercises power without geographic limits or restrictions unless provided by statute. The only banking powers limited to the branch itself are the taking and accepting of deposits and cashing of checks. While there are statutory limitations upon the physical location of banking facilities, these limitations have no relevance whatsoever to the physical location of the customers of those facilities. In Marquette National Bank v. First of Omaha Corp., 439 U.S. 299 (1978), for example, a Nebraska national bank vigorously solicited Minnesotans to become customers of its "loaning money" function by opening credit card accounts through the mail from the Nebraska bank. There was nothing wrong with doing so per se, even though it would have been unlawful for the Nebraska bank to be physically "located" in Minnesota. The practice of mail solicitation was not challenged. The only issue the U.S. Supreme Court was called upon to decide was which of the two state usury laws was applicable to the loans in question. The provisions of the small town exception do not contemplate, nor should the Supervisor infer, a geographic limitation on the bank's insurance agency service area.

b. Geographic limitations on activities may be specifically stated in a statute. Washington State Savings Banks may act as insurance agent under RCW 32.08.140(9) for the purposes of writing fire insurance on property in which the bank has an insurable interest, but only if the property is located in the city in which the bank is located or in a contiguous suburb. No such limiting language is contained in the small town exception. Geographic limitations set forth in a statute generally only restrict activities conducted pursuant to that particular statute. Notwithstanding the geographic limitations of RCW 32.08.140(9), savings banks have acted as agent for sale of fire and other casualty insurance without geographic limitation, through subsidiaries, pursuant to RCW 32.20.380.

Finding:

The Supervisor finds that if a bank maintains a full service branch in a city of less than 5,000 inhabitants, the bank's insurance agency service area is not limited to that city.

ISSUE #3

3. Does a trust company's statutory authority to act as agent for any purpose include the authority to act as insurance agent?

Analysis:

a. The proposed interpretation of the trust powers provision authorizing a trust company to act as agent for any purpose to include acting as an insurance agent is a reasonable interpretation of the literal language of RCW 30.08.150(3). As with the small town exception, the trust powers provision does not contain any limiting language concerning types of agency relationships.

b. The proposed interpretation is consistent with past interpretations from the state of Washington. By letter signed by Deputy Commissioner of the Insurance Department, Mr. F.T. Houghton and dated April 19, 1935, the then Insurance Commissioner, William A. Sullivan, in consultation with the then Supervisor of Banking, Mr. Hanson, ruled in favor of Seattle Trust and Savings Bank's (a Title 30 RCW commercial bank) application to renew its insurance license. The statutes and authorities which were the basis for the favorable determination in 1935 are, based on the Supervisor's research, the same that currently apply and were a result of Seattle Trust's status as a trust company and its authority to act as agent for any purpose. This authority remains codified in RCW 30.08.150(3).

c. The proposed interpretation is very similar to an interpretation adopted by the Missouri Attorney General in

connection with an almost identical provision of Missouri statute. That interpretation has stood without challenge for more than fifty years. See Missouri Attorney General Opinion, April 9, 1936.

d. The terms "trust company" and "trust business" are defined in RCW 30.04.010. A trust company is a company engaged in "any or all" of the trust business areas specified in RCW 30.08.150. For a trust company to qualify for this exception to engage in insurance agency activities, the trust company must be engaged in a bona fide trust business by engaging in at least some of the activities of a trust business. Therefore, a bank or trust company merely possessing trust powers does not qualify for the exception. The point at which an entity with trust powers becomes a trust company depends upon the circumstances in each case.

Finding:

The Supervisor finds that a trust company's statutory authority to act as agent for any purpose includes the authority to act as insurance agent.

ISSUE #4

4. Does clarification of the statutory provisions governing a state-chartered commercial bank or trust company's authority to conduct insurance agency activities facilitate the delivery of financial services to the citizens of the state of Washington?

Analysis:

a. The Supervisor's statutory authority to administer and interpret the banking laws of this state are broad. The legislature requires the Supervisor to "facilitate the delivery of financial services to the citizens of the state of Washington by the banks and trust companies subject to this title." See RCW 30.04.030. It is noted that in 1986 the legislature amended this provision by substituting the word "banking" with "financial" in the phrase "facilitate the delivery of banking services". The term financial services was selected because it more accurately describes the evolving nature of the banking business. It recognized the continuing amalgamation of all financial services markets, including banking and insurance.

b. The Supervisor believes promulgation of the Proposed Rule is in the public interest. Banks can be efficient distributors of insurance. The Proposed Rule, therefore, will have the effect of facilitating the delivery of financial services to the citizens of the state of Washington. The Supervisor is aware of the concern raised by some commentators regarding illegal tie-in arrangements

or other potentials for violations of consumer protection or anti-competitive laws. However, the Supervisor is also aware of the fact that other deposit-taking financial institutions are engaged in insurance agency activities. To the Supervisor's knowledge, no significant violations of law have arisen concerning the activities of these institutions in the state of Washington. There is no factual basis to support the conclusion that state-chartered commercial banks would engage in such hypothetical abuses. However, the rule does provide cease and desist authority to the Supervisor should any violation of a federal or state anti-competitive or consumer protection law occur. In addition, the rule does not preempt any authority the Insurance Commissioner possesses under the insurance code regarding regulatory enforcement.

c. The Federal Deposit Insurance Corporation, the federal agency that insures all deposit-taking institutions under the jurisdiction of the Supervisor, has interposed no objection to financial institutions engaging in insurance agency activities. Thus, it appears that the FDIC does not consider such activities a significant threat to the insurance fund. Furthermore, staff at the Federal Reserve Board have conducted studies concerning the performance of nonbank subsidiaries and have found that insurance agency activities provide a higher return on assets compared to other nonbank subsidiaries. Liang and Savage, New Data on the Performance of Nonbank Subsidiaries of Bank Holding Companies, 76 F.R.B 120 (1990). Therefore, it appears that the commentators concerns regarding safety and soundness issues are not well founded.

Finding:

The Supervisor finds that clarification of the statutory provisions governing a state-chartered commercial bank or trust company's authority to conduct insurance agency activities facilitates the delivery of financial services to the citizens of the state of Washington.

NEW SECTION

WAC 50-12-310 INSURANCE AGENCY ACTIVITIES--PROMULGATION. The division of banking, after due and proper notice, and pursuant to the general rule-making authority in RCW 30.04.030 hereby adopts and promulgates the following rules and regulations.

NEW SECTION

WAC 50-12-320 INSURANCE AGENCY ACTIVITIES--PURPOSE. These rules and regulations are intended to administer and interpret the provisions governing the authority of state-chartered commercial banks and trust companies to act as insurance agents pursuant to the provisions in RCW 30.04.215(1), 30.08.140(10), and 30.08.150(3).

NEW SECTION

WAC 50-12-330 INSURANCE AGENCY ACTIVITIES--DEFINITIONS. (1) "Bank" means a bank chartered under the provisions of Title 30 RCW.

(2) "Trust company" means a trust company chartered under the provisions of Title 30 RCW.

(3) "Insurance agent" means any person, including a bank, appointed by an insurer to solicit applications for insurance on its behalf and conduct such other activities and be subject to such restrictions of an insurance agent as authorized by the Washington insurance code, Title 48 RCW.

(4) "City" means a city whose boundaries and powers of self-government are defined by Title 35 or 35A RCW.

(5) "Located in a city" means operating a duly certificated full service branch within the city limits of the city.

(6) "Act as insurance agent" means to exercise the full power of an insurance agent on all lines of insurance subject only to the limitations and requirements of Title 48 RCW.

NEW SECTION

WAC 50-12-340 INSURANCE AGENCY ACTIVITIES--GENERAL RULE. Except as provided in these rules, or as otherwise provided by law, a bank may not act as insurance agent.

NEW SECTION

WAC 50-12-350 INSURANCE AGENCY ACTIVITIES--EXCEPTIONS. (1) A bank located in a city of not more than five thousand inhabitants may act as insurance agent from an office in that city. A bank exercising this power may continue to act as insurance agent notwithstanding a change of the population of the city in which it is located.

(2) A trust company may act as an insurance agent pursuant to its powers under RCW 30.08.150(3) "to act as attorney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise."

(3) A bank may engage in insurance activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of June 11, 1986. These activities include, but are not limited to:

(a) General insurance agency activities conducted by a bank with total assets of fifty million dollars or less, provided, however, that such bank may not engage in the sale of life insurance or annuities. For purposes of this exception "total assets" is determined by the latest consolidated report of condition filed with the supervisor of banking. This exception ceases when the value of the assets of the bank exceed fifty million dollars. The insurance agency license must be surrendered and the assets sold or otherwise disposed of within three years unless otherwise extended by the supervisor of banking.

(b) A bank may act as agent for life, disability, and involuntary unemployment insurance if the insurance is limited to assuring the repayment of the outstanding balance due on a specific extension of credit by the bank.

(c) A bank may act as agent for property insurance on loan collateral, provided such insurance is limited to assuring repayment of the outstanding balance of the extension of credit and such extension of credit is not more than ten thousand dollars (twenty-five thousand dollars to finance the purchase of a residential manufactured home and which is secured by such home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year of the extension of credit.

(4) A bank or trust company may engage in any insurance agency activity lawfully engaged in by national banks located in the state of Washington.

NEW SECTION

WAC 50-12-360 INSURANCE AGENCY ACTIVITIES--SUBSIDIARY. A bank or trust company may conduct insurance agency activities that are authorized to be engaged in by the bank or trust company through a subsidiary of the bank or trust company as authorized by RCW 30.04.125(8).

NEW SECTION

WAC 50-12-370 INSURANCE AGENCY ACTIVITIES--ENFORCEMENT. It shall be considered an unsafe and unsound practice in conducting the affairs of the bank or trust company if in the opinion of the supervisor the insurance agency activities of the bank or bank subsidiary are:

- (1) A violation of any applicable state or federal consumer protection law; or
- (2) A violation of any applicable state or federal statute prohibiting anticompetitive activities.