

July 23, 2009

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**RE: Opinion on application of RSA 384:60, II to the acceptance of public deposits**

Dear \*\*\*\*\*,

We are in receipt of your request for opinion dated May 11, 2009 regarding whether your client, \*\*\*\*\* Bank ( "Bank" ), a state-chartered bank in the state of \*\*\*\*\* with a branch in \*\*\*\*\* , New Hampshire, is authorized under New Hampshire law to accept public deposits of funds notwithstanding certain statutes which govern the placement of such funds.

Your inquiry has two parts, a bank law issue and a non-bank law issue. We can answer the former with authority but can only cite the law in answer to the latter as it is outside the bank commissioner's jurisdiction. The first issue is: does an out-of-state bank with a New Hampshire branch ("out-of-state bank") have the power to accept public deposits under the "parity" statute, RSA 384:60, II. The answer is yes. RSA 384:60, II allows out-of-state banks to operate their branches in New Hampshire with the same powers and duties as New Hampshire state chartered banks ("New Hampshire banks"). It states in pertinent part, "the out-of-state bank shall have all the powers held by a New Hampshire bank with respect to the operation of the branch or branches located in New Hampshire under applicable New Hampshire laws and regulations, subject to the duties and restrictions thereof." The branches of New Hampshire banks have the power to accept deposits and, as there is no restriction on

the type of deposits, they may accept public deposits. Due to the operation of the parity statute, it follows that out-of-state banks also have the power to accept public deposits.

The second part of your inquiry involves the ability of New Hampshire public entities to deposit public funds in out-of-state banks. The answer to this question lies in various New Hampshire statutes which are outside the jurisdiction of the bank commissioner.<sup>1</sup> The treasuries of the state, counties, towns, cities, and school districts may only deposit public funds in New Hampshire banks or in federally-chartered institutions with branches in New Hampshire. Out-of-state banks are excluded from this list, except that county treasurers and school district treasurers may also deposit certain funds with out-of-state banks if those banks agree to pledge additional security for the deposits.<sup>2</sup> These statutes pertain to the abilities and powers of New Hampshire public entities, not banks (out-of-state or otherwise).

In conclusion, New Hampshire bank law by operation of the parity statute allows out-of-state banks to enjoy the same power as New Hampshire banks to accept public deposits. Whether or not a public entity may deposit its public funds in such out-of-state banks, however, is found in statutes outside of the bank commissioner's jurisdiction.

Please let me know if you have any questions regarding this opinion.

Very truly yours,

/s/

Celia K. Leonard  
General Counsel

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<sup>1</sup> These statutory restrictions may be found at RSA 6:7 and 6:8 (state treasurer); RSA 29:1 (county treasurer), RSA 41:29 (town treasurers), RSA 48:16 (city treasurers) and RSA 197:23-a (school district treasurers).

<sup>2</sup> See RSA 29:1, I and RSA 197:23-a.