

N.D.A.G. Letter to Olson (Feb. 13, 1987)

February 13, 1987

Honorable John Olson
State Senator
Senate Chamber
State Capitol
Bismarck, ND 58505

Dear Senator Olson:

Thank you for your letter of January 14, 1987, in which you inquire as to the scope of permissible activities for trust companies chartered pursuant to N.D.C.C. Ch. 6-05. Your letter describes five potential trust company activities which I will discuss in the order presented.

First, you inquire whether a Chapter 6-05 trust company may act as a transfer agent with respect to the securities of any company. N.D.C.C. § 6-05-08(2) provides that a Chapter 6-05 chartered trust company may act as a transfer agent. It is my opinion, therefore, that acting as a transfer agent is a permissible activity for a Chapter 6-05 trust company.

Second, you ask whether a Chapter 6-05 trust company may act as custodian with respect to securities, cash, and other assets of any person, as to which the trust company's parent mutual life insurance association or its subsidiaries serve in the capacity of investment advisor or which the trust company's parent or its subsidiaries manage on behalf of any person on a discretionary or nondiscretionary basis. N.D.C.C. § 6-05-08(2) provides that a Chapter 6-05 trust company may "act as trustee under will, agreement, court order, or otherwise, and act as fiscal agent and transfer agent." N.D.C.C. § 6-05-08(3) provides that the trust company may "take, accept, and hold on deposit for savings account or for safekeeping, or in escrow, or for investment any and all moneys, bonds, stocks, and other securities, or personal property whatsoever." Based on the foregoing statutory authority, it is my opinion that a Chapter 6-05 trust company may engage in the activity described in question 2 of your letter.

Third, you ask whether a trust company may act as trustee with respect to any individual or collective trust or investment fund, including, without limitation, any qualified pension plan, employee benefit plan, or similar arrangement. N.D.C.C. § 6-05-08(2) and (3) provide the requisite authority for this activity. However, please be advised that my analysis has not included a review of the Employee Retirement Income Security Act (ERISA) of 1974 which may affect the scope of permissible activities with respect to pension and employee benefit plans.

Fourth, you ask whether a Chapter 6-05 trust company may perform administrative services for pension plans and registered investment companies, including, without

limitation, record keeping, dividend disbursing, and shareholder accounting. Although N.D.C.C. Ch. 6-05 does not specifically address these activities, they would certainly fall within, and be incidental to, the other powers discussed above.

Fifth, you inquire whether a Chapter 6-05 trust company may engage in such other incidental activities as may be necessary to carry out any of the foregoing activities or any other activities in which the trust company may lawfully engage. Obviously, incidental activities to the primary activities previously discussed would be legally authorized. I am not able to render an opinion as to "any other activities" without a specific description of the contemplated conduct.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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