

**OPINION  
76-14**

May 14, 1976 (OPINION)

The Honorable Evan E. Lips

State Senator

P.O. Box 775

Bismarck, North Dakota 58501

Dear Senator Lips:

This is in reply to your letter of April 23, 1976, pertaining to Section 26-17.1-10 of the 1975 Supplement to the North Dakota Century Code. In your letter you state as follows:

"I would like an opinion on the definition of Controlled Business as used in Section 16-17.1-10 of the North Dakota Century Code as amended.

"Specifically, my question concerns Federal Savings & Loan Associations and State Chartered Savings & Loan Associations who own an insurance agency or a service corporation engaged in the insurance agency business.

"Under the laws of the State of North Dakota, is it legal for the officers and/or employees of this type of financial institution to engage in or to solicit insurance."

Section 26-17.1-10 in its entirety reads as follows:

"Controlled business prohibited - Definition - Formula for Determination. The commissioner shall not grant, renew, continue, or permit to continue any license if he finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. Controlled business shall mean:

1. Insurance written on the interest of the licensee, or those of his immediate family or of his employer; or
2. Insurance covering himself or members of his immediate family or a corporation, association, or partnership, or the officers directors, substantial stockholders, partners, or employees, of such corporation, association, or partnership of which he or a member of his immediate family is an officer, director, substantial stockholder, partner, associate or employee. Provided, however, that nothing in this section shall apply to insurance written in connection with credit transactions.

"Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business if the commissioner finds that during any twelve-month period the

aggregate commissions earned from such controlled business has exceeded twenty-five percent of the aggregate commission earned on all business written by such applicant or licensee during the same period."

As you will note from the last paragraph of the above-quoted section, there are objective criteria to apply in determining whether or not controlled business is involved. The Commissioner of Insurance must find that during any 12 month period the aggregate commissions earned from such controlled business has exceeded 25% of the aggregate of the commissions earned on all business written by the applicant or licensee during that 12 month period. This section does not preclude Federal Savings & Loan Associations or State Chartered Savings & Loan Associations from engaging in the insurance agency business. It merely provides that the applicant or licensee to whom an insurance license was issued or may be issued may not use that license for writing controlled business.

If the Insurance Commissioner was presented with a specific factual situation indicating that more than 25% of the aggregate commissions were earned from controlled business, he would have the authority to not grant, renew, continue or permit to continue any license issued to a licensee for which any applicant is seeking a license. We would also call your attention to the last sentence of Subsection (2) of Section 26-17.1-10 which does provide that this section does not apply to insurance written in connection with a credit transaction. Thus, it would appear that the commissions involved would have to be derived from commissions that a licensee generated from the type of business to which the Savings & Loan Association would have a direct interest such as coverage on their property, or life and accident and health insurance on their officers, directors, substantial stockholders or employees.

Neither are we aware of any federal legislation or regulations which would prohibit the Federal Savings and Loan Associations from owning an insurance agency or a service corporation engaged in the insurance agency business, nor are we aware of any state statutes which would prohibit State Chartered Savings & Loan Associations from owning an insurance agency or service corporation engaged in the insurance business. However, we would call your attention to an opinion issued by this office on April 20, 1976, addressed to Mr. G. W. Ellwein, Commissioner of the Department of Banking, Financial Institutions, which did provide that the state chartered banks do not have the authority to amend their articles of incorporation to include the power to engage in the sale of insurance.

In addition, we did conclude that it was permissible for directors/officers/stockholders in a state chartered bank to engage in the insurance business within a bank as follows:

"With respect to question two, we have found no prohibition against the directors/officers/stockholders of a state-chartered bank in North Dakota forming a business entity, separate from the bank, for the purpose of engaging in the selling of insurance within the bank. Presumably the Banking Board could, pursuant to Section 6-01-04, N.D.C.C., make a rule or regulation which would prohibit the selling of insurance in

the bank proper but no such rule or regulation of the Board has been drawn to our attention. We do not, however, believe the Board could prohibit the directors/officers/stockholders from forming a business entity, separate from the bank, for the purpose of engaging in the business of selling insurance away from the bank premises.

"With respect to your third question, we are again unaware of any prohibition against an officer or other salaried employee of a state-chartered bank serving as a licensed insurance agent within the bank and assigning his commissions or profit to the bank. We also believe that the Banking Board could, pursuant to Section 6-01-04 of the N.D.C.C., make a rule or regulation which would prohibit such activity but no such rule or regulation has been drawn to our attention."

I hope the foregoing opinion adequately answers your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General