

Office of the Attorney General  
State of North Dakota

Opinion No. 83-39

Date Issued: October 14, 1983

Requested by: Robert E. Keim  
Acting Commissioner  
Department of Banking and Financial Institutions

--QUESTION PRESENTED--

Whether a notification of change and control must be given to the State Banking Board when the controlling stock of a nonbank holding company which owns a trust company is sold or purchased.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a notice of change and control must be given to the State Banking Board when the controlling stock of the nonbank holding company which owns a trust company is sold or purchased.

--ANALYSIS--

Section 6-08-08.1 of the North Dakota Century Code states in part as follows:

6-08-08.1. SALE OR PURCHASE OF BANKING INSTITUTIONS --  
NOTIFICATION TO COMMISSIONER--HEARING.

1. No person shall sell or otherwise dispose of or purchase or otherwise acquire control of a banking institution without notifying the state banking board.

\*\*\*

4. For purposes of this section, 'control' means the direct or indirect ownership of, control of or power to vote twenty-five percent or more of any class of voting shares at the election of directors of the association or one bank holding company, whether by individuals, corporations, partnerships, trusts, or other organizations.

Section 6-01-02, N.D.C.C., states in part as follows:

6-01-02. DEFINITIONS. As used in this title, unless the context or subject matter otherwise requires:

1. 'Association', 'banking association', or 'state banking association' means any corporation organized under the laws of this state covering state banking associations, and all corporations, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.

\*\*\*

5. 'Banking institution' means any bank, trust company, or bank and trust company organized under the laws of this state.

Section 6-08-08.1(1), N.D.C.C., is mandatory rather than permissive. This section requires the notification of the State Banking Board whenever control of a banking institution changes as a result of a stock sale and purchase or otherwise. The sale and purchase of a controlling interest in a nonbank holding company which owns 100% of the stock of a trust company is a means by which control of a trust company may be 'otherwise dispose[d] of' and 'otherwise acquire[d]' under Section 6-08-08.1(1), N.D.C.C. The acquisition of control over a banking institution, including a trust company, results in Section 6-08-08.1(1), N.D.C.C., becoming operative and requires without exception that the seller, who sells or 'otherwise dispose[s]' of or the purchaser, or person 'who otherwise acquires' control over the banking institution give notice to the State Banking Board of the change in control.

Section 6-08-08.1(4), N.D.C.C., defines the word 'control' in terms of ownership, control of, or power to vote the shares of an 'association' rather than a 'banking institution'. This gives rise to the assertion that a change of control notice is unnecessary where there is a change in control of a trust company which is a 'banking institution', but not an 'association' as that term is commonly used in Title 6, N.D.C.C.

Section 6-08-08.1(1), N.D.C.C., clearly directs that a notice of change of control be given when control over a banking institution, including a trust company, is changed. This subsection reflects legislative intent that the State Banking Board be kept advised of those persons or entities holding nominal ownership and actual power to control the various types of banking institutions doing business within North Dakota in order to protect the interests of the public. If the legislative assembly did not intend to protect the interests of those members of the public who do business with a trust company, the legislative assembly could easily have used a term more restrictive than 'banking institution' or could have specifically excepted trust companies from the provisions of Section 6-08-08.1(1), N.D.C.C.

The use of the word 'association' in Section 6-08-08.1(4), N.D.C.C., is an instance where the context of Section 6-08-08.1, N.D.C.C., requires a definition other than that contained in Section 6-01-02(1), N.D.C.C., in order to preserve the intention of the legislative assembly in enacting Section 6-08-08.1, N.D.C.C. In the context of Section 6-08-08.1, N.D.C.C., the word 'association' as used in Section 6-08-08.1(4), N.D.C.C., has a more generic meaning which refers to the business entity regardless of form which has the actual power to direct the operations of the banking institution through ownership, power to vote, or control of the shares of a banking institution. To determine otherwise would create a situation where unregulated changes in control would be allowed for trust companies chartered under Chapter 6-05, N.D.C.C., and owned by nonbank entities while requiring regulation of changes of control for banking associations which exercise full trust powers and pursue their trust operations under Chapter 6-05, N.D.C.C. Such a result would directly contravene the intent of the legislative assembly by protecting the public interest only insofar as those members of the public who deal with trust departments owned by banks or bank holding companies. The Legislative Assembly intended to protect the interest of all members of the public insofar as their dealings with all banking institutions.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald  
Attorney General

Prepared by: Marilyn Foss  
Assistant Attorney General