August 11, 1993

Mr. Everett T. Wohlers
Deputy Secretary of State
Commercial Affairs
STATEHOUSE MAIL
Boise, ID 83720

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: National Trust for Historic Preservation in the United States

Dear Everett:

I am in receipt of your June 22, 1993, correspondence to this office inquiring as to the ability of the state to require a federally chartered non-profit organization to meet state requirements to transact business in the state. As I understand it, the National Trust for Historic Preservation (NTHP) in the United States applied to the Idaho Secretary of State for a certificate of authority to transact business in the state as a non-profit organization. Your office is not sure whether NTHP has to meet qualification requirements since it is a federally chartered organization.

In order to transact business in the State of Idaho, foreign corporations must apply for a certificate of authority through the Secretary of State's office. Idaho Code § 30-1-110 specifies:

> A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the Secretary of State . . . .

A foreign corporation is "a corporation organized under laws other than the laws of this state." Idaho Code § 30-1-2(b). This definition appears to include federally incorporated organizations since they are not organized under the laws of the State of Idaho. However, in Federal Land Bank of Spokane v. Parsons, 116 Idaho 545, 777 P.2d 1218 (Ct. App. 1989), the court stated that a federal land bank was not a foreign corporation because it was a federally chartered instrumentality of the United States.

> Federal land banks are "federally chartered instrumentalities of the United States." 12 U.S.C. § 2011. The Idaho Supreme Court has held that an "instrumentality of the United States . . . is not a foreign corporation."

(Quoting Home Owner's Loan Corp. v. Stookey, 59 Idaho 267, 278, 81 P.2d 1096 (1938).)

The NTHP, like the federal land banks, is a federally chartered instrumentality of the United States (16 U.S.C. § 468) and, therefore, is not a foreign corporation within the meaning of Idaho Code § 30-1-110. Even if NTHP could be determined to be a foreign corporation within the meaning of Idaho Code § 30-1-110, the state cannot mandate that it fulfill the qualification requirements because states are precluded by the Supremacy Clause from exercising that type of control over the federal government.

> States cannot regulate or control the functioning of the Federal Government within their boundaries in any way which will to any extent impede, burden, or prevent the accomplishment of the Federal Government's constitutional powers.
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> . . . [The U.S. Supreme C]ourt state[d]: "A state is without power by reason of the Supremacy Clause to provide the conditions on which the Federal Government will effectuate its policies."

Chester J. Antieau, Modern Constitutional Law: The States and the Federal Government at 137-138 (1969).

In conclusion, a federally chartered corporation is not subject to the state's requirement that foreign corporations obtain a certificate of authority in order to transact business within the state for two reasons. First, federally chartered corporations are not considered foreign corporations pursuant to the definition provided in Idaho Code § 30-1-110, and second, the Supremacy Clause of the United States Constitution precludes states from exercising that kind of power or control over the federal government.

I hope this sufficiently addresses your question. If I can be of further assistance, please let me know.

Very truly yours,

TERRY B. ANDERSON
Chief, Business Regulation
and State Finance Division