

RENZ D. JENNINGS  
CHAIRMAN

MARCIA WEEKS  
COMMISSIONER

DALE H. MORGAN  
COMMISSIONER



JAMES MATTHEWS  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
(602) 542-4242  
(602) 255-2600  
FAX: (602) 255-2617

October 3, 1991

Frederic C. Liskow, Esq.  
Jenkins & Gilchrist  
1445 Ross Avenue, Ste. 3200  
Dallas, Texas 75202-2711

RE: H.C.B., Inc.  
A.R.S. § 44-1801(18)

Dear Mr. Liskow:

On the basis of the facts set forth in your letter of September 6, 1991, the Securities Division is unable to concur with your opinion as counsel that the transfer of the H.C.B. shares from the trust to the beneficial owners thereof will not constitute a "sale" pursuant to A.R.S. § 44-1801(18), since "no value is being given."

However, we believe that the proposed transaction appears to qualify for the exemption pursuant to A.R.S. § 44-1844(A)(6), as a "transaction incident to a statutory reorganization or merger." Therefore, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

This position is consistent with prior no-action letters issued by the Division. However, the Division is currently analyzing the breadth of the exemption found in A.R.S. § 44-1844(A)(6) and may take a different position on similar facts in the future.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

Frederic C. Liskow, Esq.  
October 3, 1991  
Page 2

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,



DEE RIDDELL HARRIS  
Director of Securities

DRH:MGB:wjw

Attachment

# Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

100 CONGRESS  
SUITE 1800  
AUSTIN, TEXAS 78701  
(512) 478-7100  
TELECOPIER (512) 322-3199

1445 ROSS AVENUE  
SUITE 3200  
DALLAS, TEXAS 75202-2711

(214) 855-4500  
TELECOPIER (214) 855-4300

TELEX 73-2595

1200 SMITH STREET  
SUITE 1200  
HOUSTON, TEXAS 77002  
(713) 951-3300  
TELECOPIER (713) 951-3314

WRITER'S DIRECT DIAL NUMBER

September 6, 1991

## VIA FEDERAL EXPRESS

Corporation Commission  
Securities Division  
234 N. Central Avenue, Suite 425  
Phoenix, Arizona 85004

Re: H.C.B., Inc. -  
Interpretative Opinion Request Pursuant to Section 44-1801(18)

Dear Sir/Madam:

On behalf of H.C.B., Inc., a Texas corporation ("HCB"), we are requesting that the Commission issue an interpretative opinion stating that registration of the shares of common stock proposed to be issued as set forth below is not necessary in the State of Arizona due to the fact that shares are not being issued "for value" and, therefore, the transaction will not fall within the definition of a "sale" pursuant to Section 44-1801(18) of the Arizona Revised Statutes, as amended:

The shares of the \$5.00 par value common stock of Henderson Citizens Bancshares, Inc. (the "Company") and, in connection therewith, shares of the \$0.01 par value common stock of HCB, are proposed to be offered to the shareholders of Citizens National Bank of Henderson, Texas (the "Bank"), Bank") in connection with (i) the formation of the Company as a bank holding company; (ii) the formation of Henderson Citizens Delaware Bancshares, Inc., (the "Delaware BHC") as a wholly owned subsidiary of the Company and as an intermediate bank holding company; (iii) the consolidation of New Citizens Bank, a Texas banking association and wholly owned subsidiary of Delaware BHC with and into the Bank (such bank resulting from such consolidation being referred to as the "Continuing Bank"; (iv) the acquisition of the \$10.00 par value common stock of Enterprise Bancshares, Inc. (the "Enterprise BHC Common Stock")

# Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Corporation Commission

September 6, 1991

Page 2

by the Company; (v) the merger of Merchants State Bank, Mount Enterprise, Texas ("Merchants Bank"), a subsidiary of Enterprise BHC, with and into Continuing Bank; and (vi) the distribution of the shares of HCB common stock which are currently held in trust for the benefit of the Bank's shareholders which would be distributed by the trustees of a trust indenture dated March 1, 1973. After the Bank meeting is held, but prior to the consummation of the interim bank merger, the trustee affiliate relationship between HCB and the Bank will be dissolved through dissolution of the trust and the distribution to the beneficial owners of the trust of HCB common stock. The terms of the interim bank merger provide that each shareholder of the Bank who does not exercise his dissenter's rights will receive one (1) share of Henderson Citizens common stock in exchange for each share of Bank common stock owned by said shareholders at the time the interim bank merger becomes effective. In addition, under the terms of the dissolution of the trust, each shareholder of the Bank will receive one (1) share of HCB Common Stock. The HCB common stock will not be distributed to the Bank's shareholders unless the interim bank merger, the Enterprise merger and the Bank merger are consummated.


In consideration of the foregoing facts, we do not feel that the HCB distribution of stock would be included in the definition of a "sale" in Arizona since no value is being given, directly or indirectly, for the shares and, in fact, the trust would merely be transferring the shares to the beneficial owners thereof. If you concur that the transaction should be excluded from the definition of a "sale" in Arizona, please evidence this concurrence by returning an interpretative opinion by signing the acknowledgement provided below and returning a signed copy to the undersigned.

**Jenkins & Gilchrist**  
A PROFESSIONAL CORPORATION

Corporation Commission  
September 6, 1991  
Page 3

Our check in the amount of \$200.00 is enclosed herewith in payment of the fee for this interpretative opinion. If you have any questions, or need any additional information, please call either Elaine Meyers, a legal assistant with our firm, collect, at 214-855-4633, or me at (214) 855-4730.

Sincerely,

  
Frederic C. Liskow

FCL/MEM/ts

I concur that the transaction is not included in the definition of sale in Arizona.

---

Name:  
Title: