INTERPRETIVE LETTER 85-1 (JANUARY 16, 1985)

State bank may arrange independent messenger service for customers, but may not set routes or process billings which include charges imposed by the bank for arranging the service. [Note: But see. Interpretive Letter No. 94-25]

This letter is in response to your inquiry regarding the proposal of * ("Bank") to assist its corporate customers in arranging with an independent messenger service to transfer checks and other documents to the Bank.

The relevant facts involved in this transaction as I understand them are as follows: The Bank presently services a number of corporate customers in * area. These customers, which on a regular basis transfer checks and other documents to the Bank, have found it both expensive and difficult to arrange for individual messenger services to provide this service. For these reasons, they have asked the Bank to recommend an efficient and economical means by which checks and other documents may be transmitted to the Bank. In reviewing the situation, the Bank determined its customers are located in an area which may justify the establishment of a route by an independent messenger firm to service those customers.

The Bank, having information about its customers' locations, individual messenger service requirements and being able to prepare a single bill for all services rendered to a customer, proposes to have a "limited involvement" in its customers' use of messenger services. In addition to the Bank determining the route or routes which would include those of its customers, the Bank proposes to determine which messenger firm would be willing to establish service along such routes and for what charges. The Bank would then recommend a messenger firm to its customers who are interested in this service and suggest the customers contact the firm in order to arrange for messenger services. The Bank would not be involved in the contractual arrangement a customer may make with a messenger firm and furthermore, it would assume no risk on the contractual relationship. All contracts would be between the customer and the messenger firm.

The messenger firm which establishes the route would be asked to send monthly bills to its customers in care of the Bank. The Bank would then pass the firm's charges to the individual customers through a system the Bank uses to allocate customer charges for the various banking services it provides.

It is anticipated the Bank would add to the messenger firm's charges its own fee, which may amount to 20% to 30% of the messenger firm's charges. As noted in your letter, "(t)he Bank's fees would primarily cover the Bank's costs in processing the messenger firm's charges through the account analysis system, although part of each fee would be for arranging the messenger service (namely determining the line routes, establishing the initial contact with and obtaining information about the messenger firms, and recommending such firms) and for continual monitoring of the provision of the service (such as, for example, continual oversight over the most efficient organization over the line routes)."

In reviewing this proposal, the question arises whether this arrangement may conflict with the branch banking prohibition contained in Section 6 of the Illinois Banking Act. This Section provides a Bank may not establish or maintain any branch office for the purpose of conducting any of its business. Certainly the operation of an armored car messenger service by a Bank constitutes branch banking. This question has been considered in two cases. The services offered in both cases were nearly identical. An armored car operated by Bank employees would make regular stops at a customer's place of business where it would receive deposits and cash checks. A customer wanting to use this service would sign a contract providing that the armored car messenger was an agent of the customer, and that the deposits were not "received" by the Bank until they had been delivered by the messenger to the Bank. In one of the cases, First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969), the armored car was owned and controlled by the Bank; the teller and driver-guard in the car were Bank employees; the Bank paid the cost of armored car operations and assumed complete responsibility for the monies, checks and deposits during transit by means of an insurance policy bought and paid for by it to protect the customer and the Bank and; the car bore the name of the Bank and had two-way radiophone communications with the Bank. Taking these factors into consideration the Court was able to penetrate the form of the contracts to reach the underlying substance of the transaction and find the service being rendered constituted branching.

The transaction proposed by your client is distinguishable from the transaction involved in Plant City. With regard to the Bank's proposal, the messenger firm would be an independent entity, not under the ownership or control of the Bank; the cost of the service being provided to Bank customers would be borne by the Bank customers served; and the independent messenger firm would contract directly with the Bank customer and such contract would presumably allocate among the parties the risk of loss for any checks or other documents which are in transit between the customers and the Bank. Issues which have arisen in the course of reviewing this transaction center on the "limited involvement" of the Bank with the messenger service and the requirement that the messenger firm send monthly bills to its customers in care of the Bank.

This Agency does not object to the Bank establishing the initial contact with and obtaining information about the messenger firms and relaying that information to the Bank's customers. However, it is seriously doubted whether the Bank's inherent powers include the determining of line routes and monitoring the organization of such line routes to assure greatest efficiency. These activities are more properly suited to be performed by the messenger firm. If a customer of another institution desired to contract with the messenger firm which services the Bank's customers, the messenger firm must be free to vary its route to suit its needs. In addition, while the benefits of the billing procedure were enumerated in your letter, it appears a primary reason for this requirement would be to enable the Bank to add to the messenger firm's individual charges its own fees for its involvement in the messenger services. A customer of another institution would presumably be billed directly, without a 20% to 30% charge being added to its individual charges. Therefore, the Bank may wish to review the appropriateness of requiring the messenger firm sending monthly statements to its customers in care of the Bank.