

INTERPRETIVE LETTER 88-5 (SEPTEMBER 30, 1988)

State bank may not operate messenger service for bank's customers that utilizes bank's employees. [Note: But see. Interpretive Letter No. 94-25.]

As we understand the information that you provided, the messenger service is conducted by employees of * Bank (the "Bank"). These employees act as agents of the Bank in receiving deposits and other correspondence from Bank customers, and the Bank bears the cost of the messenger service. Because the Bank can carry on the business of receiving deposits only at its main banking premises and any branches established pursuant to Section 5(15) of the Illinois Banking Act (Ill. Rev. Stat. 1987, ch. 17, par. 311(15)), the messenger service is in violation of this Section of the Act.

The other details of the messenger service that you presented--such as the fact that the messenger service comprises only a portion of the responsibilities of the operational support staff, no employee is specifically compensated for messenger activities and deposits are not accepted until teller processing is completed--do not alter the conclusion that the Bank is operating the messenger service in violation of Section 5(15) of the Act. This position is supported by the U.S. Supreme Court's holding in The First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969). In this case the Supreme Court found the bank had received a deposit when the customer delivered money to the armored car that was owned and controlled by the bank. The Supreme Court reached this result despite the fact that in the Plant City case, there was a signed agreement between the customer and the bank which stated that deposits would not be credited until delivered to the bank and that the armored car messenger was an agent of the customer and not of The First National Bank of Plant City.

The Bank may wish to assist its customers in locating a courier or messenger service by obtaining information about the various messenger and courier firms and relaying that information to the Bank's customers. If the Bank's customers wish to contract with an independent messenger firm, they should do so directly. Such contract should allocate between the parties the risk of loss for any checks or other documents which are in transit between the customers and the Bank and should provide that the customers bear the cost of the service.