

INTERPRETIVE LETTER 90-15 (AUGUST 22, 1990)

Board of state bank may operate with five directors notwithstanding that stockholders fixed number of directors at six.

I am writing in response to your letter dated * in which you asked me to confirm our telephone conversation of * regarding this Agency's interpretation of Section 16 of the Illinois Banking Act (Ill. Rev. Stat. 1989, ch. 17, par. 323(2)(a)) (the "Act").

The facts as I understand them are that at the most recent meeting of the stockholders of a state-chartered bank, six directors were elected thereby fixing the number of directors at six. Sometime afterward vacancies occurred on the Board of Directors ("Board"). Given these circumstances, you inquired whether the Board could validly operate if the number of directors dropped below five.

Section 16 of the Act provides, in pertinent part, that:

(2)(a) [T]he number of directors, not less than 5 nor more than 25, may be fixed from time to time by the stockholders at any meeting of the stockholders called for the purpose of electing directors, or changing the number thereof by the affirmative vote of at least two-thirds of the outstanding stock entitled to vote at such meeting and the number so fixed shall be the board regardless of vacancies until the number of directors is thereafter changed by similar action... (emphasis added); and...

(6) A majority of the board of directors shall constitute a quorum for the transaction of business unless a greater number is required by the charter or the by-laws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the charter or by the by-laws.

Therefore, when the stockholders elected six directors, they fixed the number of directors at six and under the provisions of Section 16(2)(a) of the Act, the number of directors on that state bank's board would remain fixed at six, regardless of vacancies, until the number of directors is changed by a vote of two-thirds of the stockholders. As such, unless the bank's by-laws provide otherwise, the board of this state-chartered bank could validly operate provided at least four directors are present at meetings called for the transaction of business and provided further that at least three of those four directors vote together.