

INTERPRETIVE LETTER 90-17 (SEPTEMBER 4, 1990)

Offices of an eligible depository institution acquired under Section 31 of the Illinois Banking Act are not "established" by the acquiring bank, and therefore are not subject to restrictions on the number and geographic locations of branches.

This is in response to your letter of * regarding the opinion of this Agency concerning the interrelationship of the emergency acquisition provisions contained in Section 31 of the Illinois Banking Act (Ill. Rev. Stat. 1989, ch. 17, par. 338) (the "Act") and the branching provisions contained in Section 5(15) of the Act (Ill. Rev. Stat. 1989, ch. 17, par. 311(15)). Specifically, you have inquired whether any offices of a savings and loan association acquired by a state bank (whether by an existing or de novo bank charter) in a purchase and assumption transaction pursuant to Section 31 would be included in the determination of the number and geographic location of branches otherwise available to such bank under Section 5(15).

Sections 31(e)(1) and (e)(3) of the Act authorize a state bank that purchases the offices of an eligible depository institution to "retain" and "maintain" such offices as branches of the purchasing bank provided the eligible depository institution established such offices prior to August 9, 1989, and provided the purchasing bank has assumed the deposit liabilities of the eligible depository institution. This Section further states that "except as provided in this Section, the purchasing bank shall only have the right to establish and maintain any additional branches to the extent that a state bank is authorized and permitted to do so pursuant to and in compliance with paragraph (15) of Section 5 of this Act (emphasis added)." This sentence provides that once an eligible depository institution's offices are acquired by a bank pursuant to Section 31, except for the purchasing bank's authority under Section 31 to retain the eligible depository institution's offices as branches of the bank, the bank does not retain the branching authority of the eligible depository institution but instead only has the authority which every other Illinois bank has to establish and maintain additional branches in compliance with Section 5(15) of the Act. In addition, the terms used in this sentence are very specific and point out the distinction between retaining and maintaining branches notwithstanding the provisions of Section 5(15) and establishing and maintaining branches pursuant to Section 5(15). The branches of an eligible depository institution which are acquired by a bank are "retained" and "maintained" under authority granted in Section 31. These branches of such bank however, are not "established" by the bank pursuant to Section 5(15). Therefore, it is the position of this Agency that since the offices of an eligible depository institution which are acquired by a bank are not deemed to be established by the bank, such offices are not included in the determination of the number and geographic location of branches available to a bank under Section 5(15).