INTERPRETIVE LETTER 90-24 (DECEMBER 10, 1990)

State bank that transfers substantially all of its assets is not entitled to home office protection while it is in less active status.

In a recent telephone conversation, you inquired about the right of an Illinois state-chartered bank to home office protection when that bank is in a less-active status pursuant to Section 13(d) of the Illinois Banking Act ("Act") (Ill. Rev. Stat. 1989, ch. 17, par. 320(d)). In particular, you asked whether *, a less-active bank ("L-A Bank"), would be entitled to claim the home office protections of Section 5(15) of the Act (Ill. Rev. Stat. 1989, ch. 17, par. 311(15)) with respect to the establishment of branches by other banks.

Section 13(d) of the Act authorized Illinois state-chartered banks to engage in purchase-and-assumption transactions and, as a result, obtain a less active status. Section 13(d) does impose certain restrictions upon less-active banks:

> [A] state bank which transfers substantially all of its assets pursuant to this subsection (d) and following such transfer does not accept deposits and make loans, shall <u>not</u> have any <u>rights, powers, interests, franchises or priveleges</u> under subsection (15) of Section 5 of this Act, as now or hereafter amended, until such bank has resumed accepting deposits and making loans (emphasis added).

The Commissioner of Banks and Trust Companies ("Commissioner's Office") takes the position that, under Section 13(d), home office protection is included in the rights, powers, interests, franchises and privileges to which less-active banks are not entitled until they resume accepting deposits and making loans.

Applying Section 13(d) to the L-A Bank, the Commissioner's Office takes the position that the L-A Bank is not entitled to claim the home office protection of Section 5(15). Therefore, the L-A Bank may not claim home office protection to prohibit other banks from establishing branches as long as it remains in a less-active status.