INTERPRETIVE LETTER 91-4 (FEBRUARY 26, 1991)

State banks may collateralize deposits of grantees of public agencies if the deposited grants are public funds that remain under some control of the public agency.

I am writing in response to your inquiry about Illinois banks collateralizing deposits made by "grantee agencies" of the Department of Commerce and Community Affairs ("DCCA"). As I understand the facts, certain programs designed to assist "low income" residents are administered by DCCA. DCCA provides grants to approximately 40 grantee agencies throughout Illinois. The grantee agencies are generally either private, not-for-profit organizations or local political units (e.g., municipalities, counties, townships, etc.). These grantee agencies receive funds from DCCA and occasionally have deposit balances in financial institutions that exceed the $100,000.00 level insured by the Federal Deposit Insurance Corporation. It is my understanding that you would like this Office to opine whether these deposits constitute "public funds" and whether such deposits can be collateralized by the bank or possibly must be collateralized by the bank.

Again, "public funds" are those funds "belonging to or in the custody of any public agency" (Ill. Rev. Stat. 1989, ch. 85, par. 901). Clearly, the grantee agencies which are local political units (e.g., municipalities, counties, townships, etc.) are public agencies as defined by Illinois law, and there is no question that the funds deposited by such local political units constitute public funds. It is more difficult to determine whether the other types of grantee agencies (e.g., the not-for-profit private organizations or corporations) are public agencies, and consequently whether deposits by those "private" grantee agencies constitute deposits of public funds. A strict, literal reading of the Illinois statute defining "public funds" and "public agency" (ch. 85, par. 901) suggests that private organizations or corporations are not public agencies and therefore that their deposits do not consitute deposits of public funds. If the funds granted by DCCA to a private organization or corporation cease to be under the control of DCCA but rather become exclusively the funds of the private organization or corporation, then I do not believe that such grants can be interpreted as public funds. If the agreement between DCCA and the private grantee agency specifies that the funds are in some manner or another still subject to the control of DCCA, then perhaps an interpretation that these funds remain funds belonging to a public agency (i.e., DCCA) would be reasonable. Perhaps we can discuss this narrow issue in more detail after you have read this letter.

Assuming, for the sake of this paragraph, that the grantee agency is a public agency and therefore its deposits constitute deposits of public funds, I will now address the question of whether the bank can or must collateralize those public deposits. Two statutes seem relevant to this issue. Chapter 85, paragraph 906(c) of the Illinois Revised Statutes states: "Whenever a public agency deposits any public funds in a financial institution, the public agency may enter into an agreement with the financial insitution requiring any funds not insured by the Federal Deposit Insurance Corporation...to be collateralized by securities or mortgages in an amount equal to at least market value of that amount of funds deposited exceeding the insurance limitation provided by the Federal Deposit Insurance Corporation...." Section 5(7)(d) of the Illinois Banking Act (Ill. Rev. Stat. 1989, ch. 17,

par. 311) states that Illinois banks are authorized "to secure deposits of public money of any state or of any political corporation or subdivision thereof." My reading of these two statutes leads me to conclude that state banks in Illinois are authorized to collateralize deposits of public funds which exceed the $100,000.00 FDIC level.

However, I can not conclude that the bank is required to collateralize such deposits of public funds involuntarily. It seems that the public agency, if it wants those excess deposits collateralized, may propose such an agreement to the bank pursuant to chapter 85, paragraph 906(c) of the Illinois Revised Statutes. The bank, under the authority of Section 5(7)(d) of the Illinois Banking Act, would be authorized to execute such an agreement with the public agency. However, the bank would be within its rights to refuse to enter into such an agreement and thus to refuse to collateralize those excess deposits. At that point, of course, the public agency would always have the right to withdraw the funds from that particular bank and "take its business elsewhere," presumably to another financial institution which would be willing to enter into such a collateralization agreement.