

INTERPRETIVE LETTER 91-32 (DECEMBER 5, 1991)

National bank may invest in a development credit corporation that makes loans for its own account without violating branching laws.

Your letter dated *, inquired whether a national bank's investment in a development credit corporation would violate Illinois branch banking laws. It is the position of this Agency that such investment would not violate Illinois' branching laws, based on the following reasoning.

Section 2 of the Illinois Banking Act, Ill. Rev. Stat. ch. 17, par. 302 (1989), defines a branch to be "any place of business of a bank at which deposits are received, checks paid, or loans made...." This definition refers first to a place of business of a bank, and second, a place of business of the bank at which one of three core functions take place. Investments made by a national bank in a development credit corporation and loans made by that corporation would not violate Illinois' branch banking laws because the corporation would remain an entity separate and apart from the bank. The corporation would not be conducting business for the national bank and, in particular, would not be receiving deposits, paying checks or making loans for the national bank. The corporation would be making the loans for its own account.

It should be noted that state banks may only invest up to 5% of their unimpaired capital and surplus in development credit corporations, unless a greater investment is approved by the Commissioner. Ill. Rev. stat. ch. 17, par. 311(21) (1989). It is conceivable that if a state bank were the sole investor in such a corporation, it would be a subsidiary of the bank. Ill. Rev. Stat. ch. 17, par. 311(12). A subsidiary of a state bank may not accept deposits or pay checks for the bank, but it may make loans and would not be limited in where it may be located for this lending activity.

A national bank has the same branching rights in Illinois as a state bank. Even if the national bank were to own 100% of the development credit corporation, so long as it does not accept deposits or pay checks for the bank, it would not constitute a branch. Thus, any ownership interest that a national bank would have in a development credit corporation would not render the corporation a branch subject to Illinois' branch banking laws.