

**INTERPRETIVE LETTER 92-1 (FEBRUARY 21, 1992)**

**National bank may establish ATM on riverboat so long as ATM remains within confines of bank's home or contiguous counties.**

Your letter to \*, Manager, Financial Information Systems Examination Division, dated \*, has been referred to the Law Department for response. In it you asked this Agency to inform you if our opinion on mobile automatic teller machines ("ATM") changed after a review of Brown v. Clarke, 878 F.2d 627 (2d Cir. 1989). With your letter, you enclosed a copy of Brown and a memorandum you prepared comparing and contrasting Brown with your client's situation.

As we understand the facts, your client, \* Bank, a national bank, has considered establishing an ATM on the \* Riverboat. The riverboat is a passenger vessel and has a casino. Its dock is located on the Illinois River. Approximately every three hours, it provides a ride north on the river for about five miles and then returns to its dock. Each ride lasts for two to two and one-half hours.

Previously, the Commissioner's Office issued no-objection letters regarding banks establishing mobile ATMs on land. You now inquire whether the Commissioner's Office would have the same position pertaining to a national bank establishing an ATM on a navigable vessel.

Since an Illinois state bank would have the authority to establish an ATM on the \* Riverboat subject to the limitations of Section 5(16) of the Illinois Banking Act, Ill. Rev. Stat. ch. 17, par. 311(16) (1989), we have no objection to \* National Bank establishing an ATM on the riverboat subject to the same limitations.

We have reviewed Brown, which addressed a messenger service operated by a national bank. Although Brown involved a discussion of bank branching, including the federal definition of "branch," we do not think it is controlling in your client's situation. Rather, we view Independent Bankers Association of America v. Smith, 534 F.2d 921 (D.C. Cir. 1976), as providing better guidance. In Independent Bankers, the court held that a customer-bank communication terminal ("CBCT") established by a national bank off its main banking premises was a "branch" pursuant to the National Bank Act, 12 U.S.C. Section 36(f), but if a CBCT was excluded from the definition of "branch" pursuant to a state statute or administrative ruling, then a national bank in that state could establish a CBCT notwithstanding branching limitations. Id. at 948 n.104. Since an ATM is not a branch under Illinois law (see Ill. Rev. Stat. ch. 17, par. 302 (1989)), federal law authorizes \* National Bank to establish an ATM to the same extent that Illinois banks are so authorized.

Section 5(16)'s limitation on the location of an ATM pertains to the boundaries of political subdivisions of the State of Illinois (i.e., counties) rather than to the permanency of the location or to the topography of the earth's surface. An Illinois state bank may establish an ATM as long as the ATM remains within the aggregate confines of the

bank's home county and contiguous counties; it does not matter whether the ATM's location is permanent or frequently changing or whether the ATM is located on land or on a navigable vessel.

The Commissioner's Office has no objection to your client's establishment of an ATM on the \* Riverboat according to the facts presented to us. Please be aware that we are not providing a general policy statement on what our position would be if the riverboat cruised beyond its current route.

**Note: See Interpretive Letter 93-7. P.A. 88-4, effective June 7, 1993, eliminated the county and contiguous county restrictions set forth in Section 5(16) of the Banking Act.**