

INTERPRETIVE LETTER 93-007 (APRIL 29, 1993)

State bank may not establish an automatic teller machine on a riverboat that will operate outside of Illinois.

We have reviewed your letter in which you requested a written response from this Agency pertaining to the possibility of the * ("Bank") establishing an automatic teller machine ("ATM") on the * ("Riverboat"), a riverboat that will be docked two miles from * on the Illinois side of the Mississippi River. Specifically, you requested an opinion on the authority of the Bank to establish an ATM on a riverboat that, at times, may traverse through out-of-state waters.

As we understand the facts, the Riverboat is a passenger vessel and will have a casino. The dock is located two miles from * in * County, Illinois. The Riverboat provides six cruises per day and makes no stops during a cruise. Each cruise lasts for three hours, and the Riverboat normally cruises within six miles from its dock. Although the Riverboat cruises the majority of its time on the Illinois side of the Mississippi River, heavy river traffic has caused the riverboat to enter the Iowa side of the river during its cruise and turnaround. The time spent on the Iowa side of the river has lasted between fifteen to twenty minutes per cruise.

An Illinois state bank has the authority, pursuant to Section 5(16) of the Illinois Banking Act, 205 ILCS 5/5(16) (1992) [Ill. Rev. Stat. ch. 17, par. 311(16)] ("Banking Act"), to establish an ATM on a riverboat that confines its cruise route to navigable waters within the bank's home county and contiguous counties. The issue in this case is whether a state bank would have the same authority in the event the riverboat cruises outside the state's boundaries.

Section 5(16) permits a state bank to establish an ATM in any county that is contiguous to the bank's home county. Section 2 of the Banking Act, 205 ILCS 5/2 (1992) [Ill. Rev. Stat. ch. 17, par. 302], defines "contiguous county" as follows:

a county in Illinois that is geographically adjacent to or in contact with any point on the border of the home county of the bank. (emphasis added)

The Banking Act treats the phrase "contiguous county" as only including Illinois counties that are contiguous to a bank's home county; the phrase does not include contiguous counties located in other states.

Applying the language of the Banking Act to the Bank's situation, the Bank is not authorized, pursuant to Section 5(16), to establish an ATM on the Riverboat if the ATM could be used outside of the aggregate confines of the bank's home county and contiguous counties as those phrases are defined by Section 2 of the Banking Act. Under

the present law, an Illinois state bank may only establish an ATM on a riverboat that cruised into a neighboring state's territory if the ATM was shut down during the part of the cruise that took the ATM outside of the Illinois county.

NOTE: P.A. 88-4, effective June 7, 1993, eliminated the restrictions set forth in Section 5(16). As amended, Section 5(16) requires that a bank's use of an ATM comply with the Electronic Fund Transfer Transmission Facility Act, 205 ILCS 615/1-100 et seq. ("EFT Act"). Under the EFT Act, an "interstate transaction" includes a transaction that has been initiated at a terminal located outside of the State of Illinois. Therefore, the authority for the ATM to provide cash withdrawals in Iowa waters now would be determined by Iowa law. (The authority for the ATM to accept deposits in Iowa waters would still require a permissive change in Illinois law. 205 ILCS 615/6-104)