

INTERPRETIVE LETTER 93-012 (JULY 22, 1993)

State bank may acquire and lease personal property to county hospital, subject to 20% investment limit; exceptions and exemptions to lending limit in Sections 34 and 35 of Illinois Banking Act do not apply to personal property leases made under Section 35.1 of Act.

We have received your letter pertaining to a Lease Purchase Agreement ("Agreement"), dated *, between * ("Bank"), *, Illinois, and * County d/b/a * Hospital ("County"), *, Illinois. It is the interpretation of the Illinois Commissioner of Banks and Trust Companies ("Commissioner") that Section 35.1(a) of the Illinois Banking Act, 205 ILCS 5/35.1(a) (1992) [Ill. Rev. Stat. ch. 17, par. 344(a) (1991)] ("Banking Act"), limits Bank's unamortized investment in the medical equipment subject to the Agreement to 20% of Bank's unimpaired capital and unimpaired surplus.

The Agreement anticipates Bank's purchase of an * and related medical equipment. County then plans to lease the equipment from Bank on the basis of a series of year-to-year terms. The Agreement provides that County is to be responsible for the maintenance, servicing, and repair of the equipment. The Agreement also permits County to purchase title to the equipment after County has paid Bank all amounts due under the Agreement. The Agreement further provides that all risk of loss or damage is to be the responsibility of County.

Section 5(14) of the Banking Act, 205 ILCS 5/5(14) (1992) [Ill. Rev. Stat. ch. 17, par. 311(14) (1991)], authorizes a state bank to acquire personal property to lease to a prospective lessee at the lessee's request in accordance with the provisions of Section 35.1 of the Banking Act. Section 35.1(a) limits Bank's unamortized investment in personal property subject to a lease to 20% of the bank's unimpaired capital and unimpaired surplus less any existing indebtedness of the lessee for money borrowed from the bank. "Unamortized investment" refers to the bank's purchase price of the personal property to be leased less the amounts already remitted by the lessee under the lease.

Section 35.1(a) would permit Bank to purchase the medical equipment for lease purposes only to the extent of its unimpaired capital and unimpaired surplus. We understand that amount to presently equal \$*. County, therefore, would need to find another financial institution in order to finance the leasing of equipment over and above that amount or, in the alternative, County and Bank would have to find a way to restructure County's obligation so that no more than \$* would be subject to the limitation of Section 35.1(a).

You have also raised the question as to whether the exceptions or exemptions to the lending and investment limitations found in Sections 34 and 35 of the Banking Act, 205 ILCS 5/34 and 35 (1992) [Ill. Rev. Stat. ch. 17, pars. 342 and 343 (1991)], might apply to your client's situation. It is clear that the introductory language of those sections, which refers exclusively to Sections 32, 33 and 34, does not directly apply to personal property

leases addressed in Section 35.1. While Section 35.1(b) includes personal property leases in the calculation of the limitation for money borrowed or otherwise in Section 32 of the Banking Act, 205 ILCS 5/32 (1992) [Ill. Rev. Stat. ch. 17, par. 339 (1991)], there is no authority for applying the exceptions and exemptions of Sections 34 and 35 to the limitation on personal property leases found in Section 35.1(a). Therefore, it is our position that the exceptions and exemptions of Sections 34 and 35 are not available to Bank, which may not exceed the 20% limitation of Section 35.1(a) with respect to its unamortized investment in the medical equipment that it expects to lease to County.