

**INTERPRETIVE LETTER 93-018 (OCTOBER 18, 1993)**

**Bank's by-laws may provide that directors are not required to own qualifying shares; directors' qualifying shares may be held in trust.**

This is in response to your letter of \*, in which you inquired whether: (a) \* ("Bank") may amend its by-laws to eliminate qualifying shares for directors pursuant to Section 16(4) of the Illinois Banking Act ("Act"), 205 ILCS 5/16(4) [Ill. Rev. Stat. ch. 17, par. 323(4)], and (b) if the Bank retains a requirement for qualifying shares, whether those shares may be held in a trust for the director as beneficiary. For the reasons outlined below, we conclude that the Bank's by-laws may provide that directors are not required to own qualifying shares. In the alternative, if the by-laws require stock ownership, the stock may be held in a trust for the director.

Section 16(4) of the Act provides in part:

Each State bank shall, in addition to any other matter included in its by-laws, provide for the ownership interest in the bank's stock or in any company that has control over the bank within the meaning of Section 2 of the Illinois Bank Holding Company Act of 1957, which interest shall be required before an individual may be elected as a director of the bank. Any director who ceases to be the owner of the required amount of shares of stock or becomes, in any form, disqualified shall vacate his office as director....

The first part of your question has been addressed in a previous interpretive letter, IL 89-13, dated October 25, 1989, a copy of which is attached. In IL 89-13, we concluded that a state bank must provide in its by-laws for whatever ownership interest in the bank is deemed appropriate for the bank's directors, but that this provision may be that no directors' qualifying shares are required.

The second part of your question requires a review of legislative development of Section 16(4) of the Act. Section 16(4) was amended to essentially its present language by P.A. 86-368, effective August 30, 1989. Prior to P.A. 86-368, Section 16(4) provided:

Each director must own in his own right, free of any lien and encumbrances, (a) shares of the bank's stock, the aggregate par value of which shall not be less than \$1,000 or (b) shares, with an equivalent interest as determined by the Commissioner, of any company which has control over such bank.... Such stock certificates issued in the director's name, shall be filed unendorsed and unassigned by him with the cashier of the bank during his term as director. Ill. Rev. Stat. ch. 17, par. 323(4) (1987). (emphasis added)

P.A. 86-368 deleted the requirement that directors own a minimum number of qualifying shares. That Act also deleted references that state the manner in which a director was

required to hold the shares. Therefore, we interpret Section 16(4) of the Act to permit the qualifying shares, if required by the by-laws, to be held in a trust with the director as beneficiary.