

INTERPRETIVE LETTER 93-025 (DECEMBER 10, 1993)

School district is a "person" for purposes of the leasing authority granted by Section 35.1 of the Banking Act.

This is in response to your letter inquiring whether * ("Bank") is permitted to participate in a lease of personal property consisting of heating and energy saving equipment to * County School District ("School District") and the limit that would apply to such a lease. In particular, you inquired whether the definition of "person" applicable to Section 35.1 of the Illinois Banking Act ("Act"), 205 ILCS 5/35.1 (1992) [Ill. Rev. Stat. ch. 17, par. 344], includes the School District. We conclude that the Bank may participate in the lease of personal property for the reasons outlined in this letter, subject to the stated conditions.

You stated that the Bank would like to purchase \$* of the \$* lease for which * is the lead lessor, and that the Bank's lending limit is \$*.

Section 5(14) of the Act provides:

Sec. 5. A bank organized under this Act or subject hereto shall be a body corporate and politic and shall, without specific mention thereof in its charter, have all the powers conferred by this Act and the following additional general corporate powers:

* * *

(14) To own and lease personal property acquired by the bank at the request of a prospective lessee and upon the agreement of that person to lease the personal property provided that the lease, the agreement with respect thereto, and the amount of the investment of the bank in the property comply with Section 35.1 of this Act. 205 ILCS 5/5(14) (1992). (emphasis added)

Section 35.1 provides in relevant part:

Section 35.1 In exercise of the power conferred by paragraph (14) of Section 5 of this Act to own and lease personal property, a state bank shall be subject to the following limitations and restrictions in addition to those contained in that paragraph:

(a) The unamortized investment of the bank in personal property subject to any lease or series of leases which is or are the responsibility of a person shall not, when added to any liability of such person for money borrowed, exceed 20% of the unimpaired capital of the bank and 20% of the unimpaired surplus. The term "unamortized investment" means the total cost of such property to the bank less so much of the payments theretofore received by the bank from the lessee and other sources, which under generally accepted principles of accounting are applicable to amortization of the investment.

(b) The amount of unamortized investment of the bank in personal property subject to a lease or leases which are the responsibility of a person shall for the purpose of computing the total permitted amount of liability of such person to the bank for money borrowed or otherwise under Section 32 of this Act be treated as the liability of such person.

(c) No such lease or related agreement shall obligate the bank to maintain, repair or service the personal property, or unconditionally obligate the bank to restore or replace the same, or in effect unconditionally place on the bank the risk of such restoration or replacement, in the event of loss, theft or destruction of or damage to such property from any cause other than a wilful act of the bank.

* * *

In the event a state bank acquires by purchase or discount a lease, or the sums due and to become due thereunder, of personal property made by a lessor other than the bank or such a subsidiary, paragraph (b) of this Section 35.1 shall also apply to the obligation of the lessee under such lease. 205 ILCS 5/35.1 (1992). (emphasis added)

Section 35.1 does not contain a definition of the "person" to whom a bank may lease personal property. However, Section 2 of the Act includes the following definitions:

"Company" means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, includes a "State bank" and a "bank".

"Municipality" means any municipality, political subdivision, school district, taxing district, or agency.

"Person" means an individual, corporation, partnership, joint venture, trust, estate, or unincorporated association.

The Act does not specifically include within the definition of "person" the School District or the more general term "municipality." However, the School Code does define each of the many types of school districts or their governing boards as a "body politic and corporate" and that as such the district can sue and be sued. 105 ILCS 5/5.1, 5/10-2, 5/33-1, and 5/34-2 (1992). For example, Section 6-2 of the School Code, 105 ILCS 5/6-2 (1992), relating to regional district school boards (which regions may include only one county) states in relevant part:

The regional board of trustees shall be a body politic and corporate by the name of "Regional Board of School Trustees of County (or Counties), Illinois." Such corporation shall have perpetual existence with power to sue and be sued and to plead and be impleaded in all courts and places where judicial proceedings are had. 105 ILCS 5/6-2 (1992). (emphasis added)

Finally, the term "body corporate" is defined to mean "a corporation public or private." Black's Law Dictionary, 4th Edition.

From these statutory provisions and definitions we conclude that the School District is a "body corporate" and therefore constitutes a corporation. A corporation falls within the definition of a "person" in Section 2 of the Act and is therefore a person to whom the Bank may lease personal property.

Section 35.1 of the Act limits the amount of "unamortized investment" in personal property that the Bank may lease to the School District, and that limit is the conventional 20% of unimpaired capital and surplus. Sections 34 and 35 of the Act do not, however, provide exemptions from the lease limits of Section 35.1. Further, Section 35.1 states that leases to the School District also must be added to loans under Section 32 to determine whether the School District's loans comply with the limits of Section 32. Any loans that are "general obligations" of the School District may be exempt from Section 32 of the Act under Section 35.