

INTERPRETIVE LETTER 93-032 (DECEMBER 22, 1993)

Illinois Banking Act does not prohibit establishment of mobile branches, but applicable branch applications and notices may be required for each change in location; mobile ATMs are permitted. [Note: Application and notice requirement may be satisfied by an established route, log of stops or other procedure.]

This is in reply to your letter in which you asked whether a bank is permitted to establish "one or more motor vehicles, fully-equipped, to provide full customer services, including automatic Teller Machine transactions....," and whether "such types of seasonal and/or temporary Branches are permissible under Illinois law." As discussed below, we conclude that Illinois law does not prohibit a bank from establishing a mobile branch.

Under section 5(15) and (16) of the Illinois Banking Act ("Act"), a state bank in Illinois has the following corporate powers:

(15) To establish and maintain, in addition to the main banking premises, branches offering all banking services permitted at the main banking premises.

(16) To establish and maintain unmanned automatic teller machines for the purpose of doing its banking business, provided that a bank's use of automatic teller machines complies with the provisions of the Electronic Fund Transfer Transmission Facility Act.

205 ILCS 5/5(15), (16) (1992) [formerly Ill. Rev. Stat. ch. 17, par. 311(15), (16)]. The Act no longer contains restrictions on these powers; the limitations on the number, location and proximity to other banks of branches and automatic teller machines ("ATM's") were removed by Public Act 88-4, leaving only the general grant of authority to establish branches and ATM's. We have attached a copy of Public Act 88-4 for your information.

A branch is defined in section 2 of the Act as follows:

A "banking house", "branch", "branch bank" or "branch office" shall mean any place of business of a bank at which deposits are received, checks paid, or loans made, but shall not include any place at which only records thereof are made, posted, or kept....

205 ILCS 5/2 (1992) [formerly Ill. Rev. Stat. ch. 17, par. 302]. This definition excludes from its application multiple properties connected to the main bank, ATM's, point of sale terminals and affiliate facilities established under Section 5(23) of the Act.

As the General Assembly has removed the restrictions upon establishing branches, the decision concerning when and where to establish a bank branch is no longer constrained by the language of sections 5(15) and (16).

Based on the plain language of sections 5(15) and (16), we conclude that the Illinois Banking Act does not prohibit the establishment of a mobile branch. This conclusion does not mean, however, that a bank is excused from any necessary applications and notices to establish a branch. The Commissioner, or the appropriate federal bank regulator, such as the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Federal Reserve System, may require information concerning a bank's plans to operate the mobile branch to determine that the bank has adequately addressed concerns for safe and sound operation, including necessary security measures. In addition, since the appropriate branch applications or notices require the identification of the address for the proposed branch, it may be necessary to submit a new application or notice each time that the mobile facility is moved for the purpose of doing business with the public. It is not the purpose of this letter to address this issue, since in the case of your institution, such determination must be made by the Office of the Comptroller of the Currency.

A separate question raised by your letter is whether the bank may equip the motor vehicle with an ATM for utilization at "[c]ommunity functions such as street fairs, carnivals, etc.," but not provide bank personnel to accept deposits, make loans or cash checks. The vehicle in that instance would not be a branch, but only a mobile ATM. The Commissioner's Office previously has concluded in Interpretive Letter 90-21 that mobile ATM's are permitted under Illinois law. Since Interpretive Letter 90-21 was issued, Public Act 88-4 amended section 5(16) to delete all limitations on the number and geographic locations of ATM's that a bank may establish. The previous language in section 5(16) authorizing the temporary establishment of mobile ATM's at fairs and neighborhood or community festivals was deleted because that language was inconsistent with the broader grant of authority placed in section 5(16) as amended by Public Act 88-4. Based upon this broad grant of authority to establish ATM's, we conclude that a bank may establish a mobile ATM at community functions such as fairs and neighborhood or community festivals. Again, this letter expresses no opinion concerning the application or notice that the Commissioner or the appropriate federal bank regulator may require for such a mobile ATM.