

INTERPRETIVE LETTER 94-10 (JUNE 15, 1994)

State bank may establish as branches stand-alone night receptacles in malls and in mall parking lots that are not connected to or otherwise near an ATM or other facility and are accessible only to bank's customers.

This is in response to your inquiry in which you asked whether * ("Bank"), *, Illinois, may establish a night depository receptacle in a shopping mall or on the mall's parking lot at a location not on Bank's main banking premises or a branch. You also asked whether the receptacle must be connected to an automatic teller machine ("ATM") or next to one and whether it must be accessible to customers of other banks. For the reasons stated below, we conclude that Bank may establish a night depository receptacle located off Bank's premises, the receptacle is not required to be accessible only through the ATM, and it is not necessary that the receptacle be accessible to parties other than Bank's customers.

Prior to the enactment of Public Act 88-4 (Senate Bill 598) which became effective June 7, 1993, Section 5(15) of the Illinois Banking Act, 205 ILCS 5/5(15) et seq. (1992) ("Banking Act"), in addition to authority to establish branches provided that "[a] branch shall not consist of one or more devices or machines." 205 ILCS 5/5(15)(f) (1992). In Interpretive Letter 92-4 (May 14, 1992), the Commissioner concluded that a depository receptacle was a branch under Section 2 of the Banking Act, 205 ILCS 5/2 (1992), and violated the limitations of Section 5(15)(f). If, however, the depository receptacle was connected to an ATM and accessible exclusively through the ATM, the Commissioner deemed the receptacle to be a part of the ATM and, therefore, by definition the receptacle would not constitute a branch. A copy of Interpretive Letter 92-4 is enclosed for your reference.

Public Act 88-4 deleted Section 5(15)(f) from the Banking Act so that Section 5(15) now only provides that a state bank has authority "[t]o establish and maintain, in addition to the main banking premises, branches offering all banking services permitted at the main banking premises." 205 ILCS 5/5(15) (1992). Section 5(15) no longer limits the number or geographic location of branches, the activities that Bank may conduct at a branch or prohibit a branch from consisting solely of a device. Therefore we conclude that Bank may establish a branch that consists only of a stand-alone depository receptacle.

We therefore also conclude that the Banking Act permits Bank to establish stand-alone night depository receptacles in malls and in mall parking lots without requiring the receptacles to be connected to or otherwise near an ATM. Additionally, there are no provisions in state law or regulations that require Bank to provide access to their night depository receptacles. Consequently, under state law, Bank may restrict the access to a night depository receptacle to its own customers. Since the Commissioner determined in Interpretive Letter 92-4 that depository receptacles are branches, Bank will have to file a Notice of Intent to Establish a Branch with * in accordance with Section 305.20 of the

Commissioner's Rules, 38 Ill. Admin. Code ' 305.20. A copy of Commissioner's Rule 305 is enclosed for your reference.

Since Bank is also examined by the Federal Deposit Insurance Corporation ("FDIC"), we suggest that Bank contact the FDIC to obtain their interpretation of their requirements for night depository receptacles.