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FILE NO. S-734

BANKS AND BANKING:
Whether currency dispensing equipment constitutes branch banking

H. Robert Bartell, Jr.
Commissioner of Banks and Trust Companies
Room 400 Reisch Building
4 West Old State Capitol Plaza
Springfield, Illinois 62701

Dear Mr. Bartell:

This responds to your request for an opinion concerning the legality of the proposed installation of currency dispensing equipment in The Larkin Bank, an Illinois State chartered institution and in the First National Bank of Elgin, both located in Elgin, Illinois. As you state in your letter, the equipment would be programmed in such a manner so as to honor cash with-

drawal requests from either the demand deposit account or Master Charge account maintained by customers of either bank. Thus a Larkin Bank customer, if the operation were permitted, might obtain cash either from his checking account or Master Charge account by using the machine at the First National Bank of Elgin. Likewise, customers of the First National Bank of Elgin would have the same service extended to them through the use of the machine installed on The Larkin Bank premises.

Your question is whether this constitutes branch banking. By section 6 of the Illinois Banking Act (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 106), branch banking is prohibited. The provision reads as follows:

> "§6. Branch Banking Prohibited.) No bank shall establish or maintain more than one banking house, or receive deposits or pay checks at any other place than such banking house, and no bank shall establish or maintain in this or any other state of the United States any branch bank, nor shall it establish or maintain in this State any branch office or additional office or agency for the purpose of conducting any of its business."

Branch banking is defined in section 2 of the Illinois Banking Act (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 102) as follows:

> "* * * A 'banking house', 'branch bank', 'branch office' or 'additional office or agency' within the meaning of the prohibitions of Section 6 hereof shall include any branch bank, branch office or additional house, office, agency or place of business at which deposits are received or checks paid, or any of a bank's other business is conducted, * * * "

There is no question that if either of the banks established currency dispensing equipment separate and apart from its own banking facility, this would constitute branch banking and be prohibited. As stated in your letter, there is also no question that general banking business does include the cashing of checks and making of credit card advances available to persons who are not customers, per se, of a particular bank. Thus it could be argued that the currency dispensing equipment merely automates a phase of general banking business and therefore, is not branch banking.

I have found no cases which directly deal with this question. Most cases concerning branch banking discuss the establishment of a separate facility apart from the bank and not connected with another bank. The Illinois Supreme Court avoided a similar question in Northtown Bank v. Becker,

31 Ill. 2d 526. In that case Citizens National Bank of Decatur sought to establish three independent banks. It mailed a letter to its depositors which stated that:

> "* * * '[A]s affiliates of the Citizens National Bank, they [the three new banks] will have many advantages such as experienced banking management and operating efficiencies not available to most such new institutions', and that Citizens would be 'strengthened by providing more convenient services to all of the people of the community through these new banks.'* * * "

The court avoided the question as to whether or not operations conducted in the manner described in the letter to Citizens' depositors would violate the statutory provision against branch banking.

You have provided no details as to the operation of the currency dispensing equipment. However, I do not think it is necessary for such details. Even though the cashing of checks and making of credit card advances available to persons who are not customers of a particular bank is part of the general banking business, this practice is left to the discretion of the bank on each individual situation. Here the bank is operating as an agent for the customer and not for the customer's bank. Under

the proposed currency dispensing operation there is no discretion. The service is available to all customers of either bank. Here it could be argued that each bank is operating as an agent for the other bank, not the customer. It could also be argued that there is a distinction between honoring cash withdrawals from a demand account and a Master Charge or other credit card since with credit cards the bank assumes no risk and is more clearly acting as an agent for the customer. Regardless of these legal niceties, the proposed operation, in my opinion, provides a competitive advantage not anticipated by the Illinois Bank Act and is against the public policy of this State in that it provides such a competitive advantage to these two banks over other banks.

Competition between banks and the local autonomy of banks has long been the public policy of this State. Section 1 of the Bank Holding Company Act of 1970 (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 71) provides as follows:

> "§1. It is held to be in the public interest that competition prevail in the banking system and to that end that the independence of unit banks be protected."

In Braeburn Securities Corp. v. Smith, 15 Ill. 2d 55, at 61, the Supreme Court stated:

> "* * * Banking is a business peculiarly affected with a public interest. Local autonomy of banks serving the individual and commercial needs of a community has been impliedly the policy of this State since the 1929 amendment to the Illinois Banking Act (Smith-Hurd Stat. 1929, ch. 16 1/2, par. 9) enacted following the passage by Congress of the McFadden Act which, in effect, permitted the States to determine whether State or national banks operating within a State might maintain branches. Branch banking in Illinois has been prohibited for many years.
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> It is clear that this prohibition could be circumvented and indirect branch banking result if, through ownership of bank stock, one or more bank holding companies could control several banks. Branch banking can be accomplished by one bank operating at several locations or by one company owning or controlling several banks variously located. * * * "

This approach in determining what types of operations are permitted under branch banking legislation has been taken by the U. S. Supreme Court in First National Bank v. Dickinson, 396 U.S. 122, in which it considered the definition of "branch" as defined in the McFadden Act, 12 U.S.C. sec. 36(f) which provides:

> "'(f) The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office,

> or any branch place of business . . . at which deposits are received, or checks paid, or money lent.'"

The Supreme Court held there that mobile armored car service provided to a bank's customers at various locations and a stationary depository for money at a location other than the main office of the bank, constituted branch banking even though the customer signed a contract which stated that the armored car personnel were agents of the customer and not the bank and that the deposits were not accepted by the bank until received at the main bank office. The court stated at page 136:

> "* * * Because the purpose of the statute is to maintain competitive equality, it is relevant in construing 'branch' to consider, not merely the contractual rights and liabilities created by the transaction, but all those aspects of the transaction that might give the bank an advantage in its competition for customers. Unquestionably, a competitive advantage accrues to a bank that provides the service of receiving money for deposit at a place away from its main office; the convenience to the customer is unrelated to whether the relationship of debtor and creditor is established at the moment of receipt or somewhat later.
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> * * * "

Although in that case the U. S. Supreme Court limited its discussion to deposits, there is no reason it would not be

equally valid with regard to cashing checks. The reasoning of the case has been followed in Tri-City Bank of Warren v. State, 197 N.W. 2d 332 (Court of Appeals of Mich., 1972).

Furthermore, in interpreting the law in regard to banking, it must be remembered that banks are strictly regulated in the public interest and that any ambiguity as to their powers must be interpreted against the bank and in favor of the public. This was so stated by the Supreme Court in State Bank of Blue Island v. Benzing, 383 Ill. 40 at 52-53:

> "* * * This court has often held that the banking business is so impressed with a public interest that it is subject to strict regulatory legislation. (Continental Nat. Bank and Trust Co. v. Peoples Trust and Savings Bank, 366 Ill. 366; People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75; Knass v. Madison and Kedzie State Bank, 354 Ill. 554.) This court in the case of Knass v. Madison and Kedzie Bank, 354 Ill. 554, on page 561 of the opinion, said: 'The rule long recognized and frequently announced by this court is, that a bank incorporated under legislative charter, like other corporations so organized, has only such powers as are expressly conferred by the statute under which it is organized and such powers as are necessarily implied from the specific grant of power. Every power that is not clearly granted is withheld. Enumeration of powers granted implies exclusion of all others, and any ambiguity in the terms of the grant of power must operate against

the corporation and in favor of the public.
* * * "

I therefore am of the opinion that the proposed operation constitutes branch banking and is against the public policy of this State and therefore illegal.

Very truly yours,

ATTORNEY GENERAL