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ATTORNEY GENERAL

STATE OF ILLINOIS

500 SOUTH SECOND STREET

SPRINGFIELD

62706
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FILE NO. S-872

**BANKS AND BANKING:
Measurement For Location
of Detached Facility**

Richard K. Lignoul
Acting Commissioner of
Banks and Trust Companies
Room 400 Reisch Building
4 West Old State Capitol Plaza
Springfield, Illinois 62701

Dear Mr. Lignoul:

This responds to your request for an opinion as to the proper point from which to measure to determine whether a proposed location for a detached drive-up banking facility is within the distance limitation prescribed by section 5 of the Illinois Banking Act. (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 105.) That section provides in pertinent part as follows:

"§ 5. General Corporate Powers.) A bank organized under this Act or subject thereto shall be a body corporate and politic and shall, without specific mention thereof in the charter,

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have all the powers conferred by this Act and the following additional general corporate powers:

* * *

(15) To establish and maintain a facility for the purpose of doing business with the operators of or passengers in motor vehicles provided such facility complies with the following provisions:

(a) No facility shall be more than 1500 feet from the main banking premises of the maintaining bank.

* * *

The distance referred to in this paragraph shall be measured in a straight line from the nearest point of one premises to the nearest point of the other premises, the word 'premises' being deemed to mean the boundaries of the real estate on which the facility or the maintaining bank is located, as the case may be, and the areas contiguous thereto which the bank has the exclusive right as owner or lessee to use or maintain for egress from or ingress to or for parking in connection with the main banking house, or as the case may be the facility permitted hereby."

You state in your request that a bank located in a shopping center has under consideration the building of a drive-up facility on property located approximately one-half mile from the bank's main office. The main bank building is located in a complex of buildings in the middle of the shopping center. This complex is surrounded by a large parking lot which is part of the shopping center. The bank has leased a roadway 20 to 30 feet wide around the bank and through the parking lot to an exit on the street. The distance from the exit to the proposed site is less than 1500 feet. Under the lease, as I understand it, the bank does not have the exclusive right to

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use the parking facilities or the roadway. It only has the exclusive right to maintain the roadway.

From your letter and enclosed material it appears that your primary concern in discussing the matter with the applicant bank has been whether a lease providing for the exclusive right to maintain a contiguous area is sufficient to include the area within the premises where the lease does not expressly include the exclusive right to use the area for ingress or egress and for parking. Of equal importance in determining whether an area is included within a premises as defined by the statute is whether the area is contiguous. If an area is not contiguous, there is no need to consider whether a lease must include the exclusive right to use such area for ingress or egress and for parking.

"Contiguous" has been defined in several cases with regard to annexation statutes. In general, courts have defined it to mean to touch or adjoin in a reasonably substantial physical sense. (Western Nat. Bank v. Vil. of Kildeer, 19 Ill. 2d 342 at 352.) For instance, in Peo. ex rel. Marre v. Country-side Sanitary Dist., 5 Ill. App. 3d 747, the court held that a strip of roadway which was 50 feet wide and 1,580 feet long was

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not contiguous to a sanitary district, even though it touched the U shaped district perpendicularly at each end so as to close the U. In People v. City of Rockford, 120 Ill. App. 2d 275, the court held invalid the annexation of both a road perpendicular to a city and the subdivision to which it led. The common boundary was only 20 feet wide. It is apparent that something more than a mere touching is necessary for areas to be contiguous.

The primary purpose in statutory construction is to arrive at the intent of the legislature. (Certain Taxpayers v. Sheahan, 45 Ill. 2d 75.) Thus, the word "contiguous" as used in this statute must be defined in keeping with what was the obvious intention of the legislature. The People v. Village of Streamwood, 15 Ill. 2d 395.

The apparent intention of the legislature was to permit banks which, because of limited space or traffic patterns, could not practically build a drive-up facility adjacent to the main bank building, to build a drive-up facility within a specified distance from the bank. (Robert E. Hunt, "The Amendments to the Illinois Banking Act", Illinois Banker, December 1965, p. 8.) It was not the intention to sanction the purchasing or leasing of land by a bank for the mere purpose of establishing a detached drive-up facility at any

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desirable location in disregard of the public policy against branch banking. I, therefore, am of the opinion that "areas contiguous" to the real estate on which the facility or main bank building is located include only those areas which touch or adjoin such real estate in a reasonably substantial physical sense. Measurements may be made only from the real estate or areas which are contiguous as so defined. Whether a specific area is contiguous can only be determined from an examination of the facts in each case.

In this particular matter, the roadway through the parking lot is but 20 to 30 feet wide and appears to be leased for no other reason than to provide a means to come within the statutory limitations. If such is the case, the lease is patently devious (Cf. Peo. ex rel. Marre v. Countryside Sanitary Dist., supra), and a mere subterfuge (Cf. Petition for Annexation of Lands, 130 Ill. App. 2d 821), and the roadway could not be considered contiguous to the bank real estate in a reasonably substantial physical sense. If such is not the case, I will consider the question further.

Very truly yours,

A T T O R N E Y G E N E R A L