



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 95-014

STATE MATTERS:
Check Cashing and ATM
Services on State Property

The Honorable Judy Baar Topinka
State Treasurer
100 West Randolph, Suite 15-600
Chicago, Illinois 60601

Dear Treasurer Topinka,

I have your letter wherein you inquire regarding the authority of the State Treasurer to enter into an agreement with a financial institution for the provision of check cashing and automatic teller services at the State Capitol and other State facilities. For the reasons hereinafter stated, it is my opinion that the State Treasurer has been authorized, on and after July 1, 1995, to enter into such agreements pursuant to section 18 of the State Treasurer Act (added by section 5 of Public Act 88-640, effective July 1, 1995 (to be codified at 15 ILCS 505/18)).

On November 5, 1992, my predecessor issued opinion No. 92-028, in which he concluded that the State Treasurer did not have the authority to enter into an agreement with a private

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banking corporation for the establishment of a branch bank in the State House. Subsequent to the issuance of that opinion, Public Act 88-640 was enacted, which adds new section 18 to the State Treasurer Act (15 ILCS 505/1 et seq. (West 1992)). Section 18 provides:

"Check cashing and automatic teller machine services. The Treasurer may enter into written agreements with financial institutions for the provision of check cashing or automatic teller machine services, or both, at the State Capitol, State office buildings, State parks, and State tourism centers. The Treasurer shall establish competitive procedures for the selection of financial institutions to provide the services authorized under this Section. The Treasurer shall enter into written agreements with the authorities having jurisdiction of the property where the services are intended to be provided. These agreements shall include, but not be limited to, the quantity of machines to be located at the property and the exact location of the service or machine and shall establish responsibility for payment of expenses incurred in locating the machine or service.

The agreements with the financial institutions shall establish the amount of compensation to be paid by the financial institution. The financial institution shall pay the compensation to the Treasurer in accordance with the terms of the agreement. The Treasurer shall deposit moneys received under this Section into the Treasurer's Rental Fee Fund, a special fund hereby created in the State treasury. The Treasurer shall use the moneys in the Fund for the operation of the program established under this Section.

This Section does not apply to a State office building in which a currency exchange or a credit union providing financial services located in the building on the effective

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date of this amendatory Act of 1994 is operating."

The new section substantially addresses the concerns expressed in opinion No. 92-028.

The primary basis for the conclusion reached in the earlier opinion was that the Treasurer lacked either constitutional or statutory authority to enter into the proposed agreement. Although the Treasurer's office had, for some time, operated a teller facility in the State House, a practice which had apparently developed from the Treasurer's functions in honoring State warrants and accepting monies for deposit into the State Treasury, the agreement contemplated in 1992 would have replaced the limited check cashing service with a virtually full service branch bank. A review of the Treasurer's powers revealed no constitutional or statutory authority for such an agreement.

Section 18, however, grants specific authority to the Treasurer to enter into agreements for the provision of check cashing services and/or automatic teller machines at the State House and at other locations. The authority granted is more limited than that sought to be exercised in 1992, and the services which may be offered are similar to those which the Treasurer's office has traditionally provided at the State House. In addition, the new section provides for competitive procedures for selecting service providers and the payment of consideration

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to the State, matters of concern which were also raised in the earlier opinion.

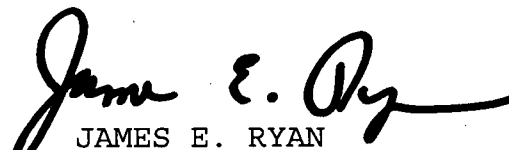
Moreover, the legislative action, and the limitations on the authority granted, address the concern previously expressed regarding the use of public property for private purposes in contravention of article VIII, section 1(a) of the Constitution (Ill. Const. 1970, art. VIII, sec. 1(a)). It is important to note that my predecessor did not conclude that the operation of any banking facility in a State-owned building would be a per se violation of the Constitution. Rather, he recognized that the determination of what constitutes a public purpose is one primarily for the General Assembly to make. (People ex rel. City of Urbana v. Paley (1977), 68 Ill. 2d 62, 71-72; People ex rel. Salem v. McMackin (1972), 53 Ill. 2d 347, 355.) Both of the cited cases hold that if the principal purpose and objective in a given enactment is predominantly public in nature, the Constitution is not violated by a mere incidental benefit to private interests. The legislative limits upon the nature of the services to be offered and the location of such services at particular State properties indicates consideration of the public purpose to be served. The limitations permit service for the convenience of those doing business with the State and those using certain State facilities, while limiting the private banking interest which was evident in the provision of a full service branch bank to a "captive audience" of persons seeking to do business with the

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State at the State House. It cannot be said that the General Assembly's apparent determination that the provision of limited banking services by contract in State-owned building will serve a public purpose is capricious or unfounded.

Therefore, for the reasons stated, it is my opinion that the Treasurer may, on or after July 1, 1995, and within the limits expressed in Public Act 88-640, enter into agreements with financial institutions for the purpose of providing check cashing and/or automatic teller machine services at the State House and other State facilities.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL