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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 81-031

**LICENSED OCCUPATIONS:
Traveler's Checks**

Edgar F. Callahan
Director
Department of Financial Institutions
160 North LaSalle Street
Room 500
Chicago, Illinois 60601

Dear Director Callahan:

I have your letter in which you inquire whether a person who engages in the business of selling or issuing traveler's checks is required to obtain a license under the Illinois Sale of Exchange Act (Ill. Rev. Stat. 1979, ch. 16 1/2, par. 301 et seq.). For the reasons hereinafter stated, it is my opinion that a person who engages in the business of selling or issuing traveler's checks, is required to obtain a license under the provisions of the Illinois Sale of Exchange Act.

Section 4 of the Act (Ill. Rev. Stat. 1979, ch. 16 1/2, par. 304) provides as follows:

"No person shall engage in the business of selling or issuing exchange at multiple locations through agents, subagents or representatives as a service or for a fee or other consideration without first securing a license to do so from the Director, except that no license under this Act shall be required of any agent, subagent or representative of a licensee, or employee of such agent, subagent or representative, who acts on behalf of such licensee in the sale of exchange of which the licensee is the issuer.

* * *

"Exchange" is defined in section 3 of the Act (Ill. Rev. Stat. 1979, ch. 16 1/2, par. 303) as follows:

"Unless the context otherwise requires:

* * *

'Exchange' means any check, draft, money order or other written instrument for the transmission or payment of money or credit. It does not mean money or currency of any nation.

* * *

(Emphasis added.)

In general, a traveler's check is an instrument signed by a designated officer of the issuing company, ordering the company to pay on demand at any office or banking correspondent of the company, the amount of money specified on the check. The checks are sent to a selling agent, who later sells the checks to purchasers. Purchasers sign the checks upon receipt and countersign the checks when they wish to use them. (Hawkland, American Traveler's Checks 84 B.L.J. 377.) Traveler's checks serve the dual purpose of a letter of credit and a draft on the issuing agency. Emerson v. American Express Company (1952), 90 A. 2d 236, 239-240.

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Several characteristics of traveler's checks have been established. Upon being printed they become a medium of exchange or acquire negotiable characteristics. (Ashford v. Thos. Cook & Son (Bankers) Ltd. (1970), 471 P. 2d 530, 534.) They are complete against the issuing agency when issued, even without the countersignature. (Pines v. United States (1941), 123 F. 2d 825, 828.) Once they are signed and countersigned, they are an unconditional promise to pay and are fully negotiable. Gray v. American Express Company (1977), 34 N.C. App. 714, 239 S.E. 2d 621, 623.

Although traveler's checks are clearly " * * * written instruments for the transmission or payment of money or credit * * * " and thus within the definition of "exchange", the argument may be raised that the legislature intended to exclude traveler's checks from the Act by excluding them from the definition of "money order". The statement of policy contained in section 1 of the Act makes reference to "checks, drafts and money orders":

"Policy of act. The General Assembly has found and declares:

that checks, drafts and money orders are bills of exchange used in the transmission or payment of money or credit;

* * *

Instruments with the characteristics of traveler's checks would seem to be included under the term "money order" as defined in section 3 of the Act. Section 3 excludes from the definition of

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"money order" any instrument which requires, as do traveler's checks, a countersignature for validation after issuance:

* * *

'Money Order' means a bill of exchange issued at the request and for the use or benefit of a person other than the issuer and representing an unconditional order or obligation in writing of the issuer to pay a sum certain in money on demand to order or to bearer. It does not mean instruments requiring counter signature for validation after issuance.

* * *

(Emphasis added.)

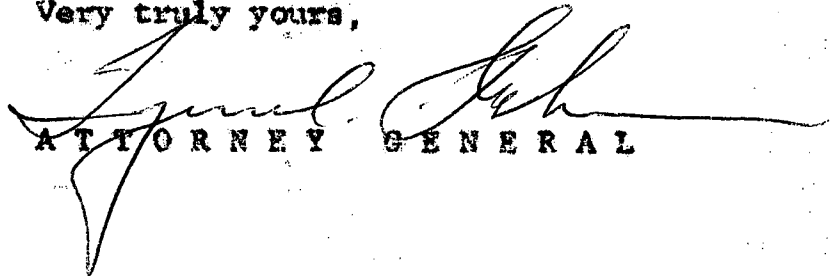
The fact that traveler's checks are excluded from the definition of "money order", however, does not indicate legislative intent to exclude traveler's checks from the provisions of the Act.

The cardinal rule in the construction of statutes to which all other canons and rules are subordinate, is that a statute must be construed so as to ascertain and give full effect to the intention of the General Assembly as expressed in the statute. (Lincoln National Life Insurance Company v. McCarthy (1957), 10 Ill. 2d 489, 494-495.) In construing a statute to ascertain the intention of the General Assembly, the statute should be construed as a whole or in its entirety and the legislative intent gathered from the entire statute rather than from any one part thereof. (People ex rel. Nelson v. Olympic Hotel Building Corporation (1950), 405 Ill. 440, 444-445.) This includes the title of the Act. Illinois Bell Telephone Company v. Ames (1936), 364 Ill. 362, 365.

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The title of the Act plainly shows that the legislature intended to license and regulate the business of selling or issuing checks, drafts, money orders, or other instruments for the transmission or payment of money. This intention is also clear from the language of the definition of "exchange" contained in section 3. Therefore, it is my opinion that the General Assembly intended the Act to have the broadest possible scope and that, since traveler's checks are "instruments for the transmission or payment of money or credit", those who engage in the sale of them are subject to the Illinois Sale of Exchange Act.

Very truly yours,


ATTORNEY GENERAL