



HENRY McMASTER
ATTORNEY GENERAL

September 28, 2009

The Honorable Kevin L. Bryant
Senator, District No. 3
104-A North Avenue
Anderson, South Carolina 29625

Dear Senator Bryant:

In a letter to this office you questioned whether a licensed pawnbroker, who also holds a supervised lender license, may make a supervised loan in the same location that he operates his pawnbroker business. You specifically referenced S.C. Code Ann. § 37-3-512 which states:

(1) [e]xcept as provided in subsection (2), a restricted lender and a licensee authorized to make supervised loans pursuant to the provisions on authority to make supervised loans (§ 37-3-502) may not engage in the business of selling goods, or permit others to engage in the business of selling goods, at a location where supervised loans are made. In this section, "location" means the entire space in which supervised loans are made and must be separated from any space where goods are sold or leased by walls which may be broken only by a passageway to which the public is not admitted.

(2) This section does not apply to

(a) occasional sales of property used in the ordinary course of business of the licensee;

(b) sales of items of collateral of which the licensee has taken possession,

(c) sales of items by a licensee who is also authorized by law to operate as a pawnbroker; or

(d) Supervised Financial Organizations.

(3) A licensee may not carry on other business for the purpose of evasion or violation of this Title at a location where he makes supervised loans. (emphasis added).

A “supervised loan” is defined by S.C. Code Ann. § 37-3-501(1) as “...a consumer loan in which the rate of the loan finance charge exceeds twelve percent per year as determined according to the provisions of the loan finance charge for consumer loans.....”

Upon first reading of this provision, it does not appear to prohibit supervised loans being made at a pawnshop. However, a review of other statutory provisions results in the conclusion that the pawnbroker statutes prevent certain types of supervised loans being made at a pawnshop. Such is consistent with the construction of the pawnbroker statutes, S.C. Code Ann. §§ 40-39-10 et seq., by the South Carolina Department of Consumer Affairs.

Pursuant to Section 40-39-20,

[a]ll pawnbrokers conducting business in this State are under the authority of and regulated by the Department of Consumer Affairs, the administrator of which has the authority to promulgate regulations as he considers necessary to carry out the conditions and intent of this chapter. No person may carry on the business of a pawnbroker in any location in this State without first having obtained a Certificate of Authority for each location from the Department of Consumer Affairs.

Upon receipt of your letter requesting the opinion, I contacted an attorney from the Department of Consumer Affairs and discussed the issue in question. The following is the response received by this office from the Department which outlines the conclusion that the pawnbroker statutes prevent certain types of supervised loans being made at a pawnshop. As noted in an opinion of this office dated October 26, 2006,

[t]his office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of...(a)...statute in question. See, e.g., Ops. Atty. Gen. dated March 9, 2000 and November 25, 1998. As noted in a prior opinion of this office dated October 20, 1997, “construction of a statute by the agency charged with executing it is entitled to the most respectful consideration...and should not be overruled absent cogent reasons.” Moreover, where an administrative interpretation is long-standing and has not been expressly changed by the General Assembly, the agency interpretation is entitled to even greater deference. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (Ct.App. 1983). As recognized in another

prior opinion of this office dated March 12, 1997, if an administrative interpretation is reasonable, courts will defer to such construction even if that construction is not the only reasonable one or the one a court would have adopted in the first instance.

Recognizing such, this office would defer to the interpretation by the Department of Consumer Affairs of the issue in question. See also: Ops. Atty. Gen. dated September 17, 2007 and July 28, 2006.

I was informed that by the Department of Consumer Affairs that when Section 37-3-512(2)(c) dealing with restricted and supervised lenders was first enacted in 1976, there was no general law regulating pawnshops. As a result, it was necessary to make special allowances for them to continue making their loans. As stated by the attorney for the Department,

By definition any loan in which the loan finance charge exceeds 12% is a supervised loan, and all pawnbroker loans are more than 12%. This is why the exception for pawnbrokers in § 37-3-512(2)(c), allowing them to sell goods where they make loans, is important for pawnbrokers because they can buy and sell items and sell the items that are forfeited under the pawnbroker law...

Apparently, the legislature felt that pawnbrokers needed more specific regulation, because the pawnbroker law was passed in 1988...(See Act No. 491 of 1988)...Those statutes fixed the rates and charges on pawn loans. Pawnbroker rates start at 300% for a loan of \$50 or less and go down to 100.50% for a loan of \$2,000, which is the most a pawnbroker can loan. So, all pawn loans are still supervised loans, but pawnbrokers do not have or need a supervised lender license because they have a license to make loans under the pawnbroker law.

There are other limitations on pawn loans. For example, loans on titled goods and loans on checks are prohibited. There are no such limitations for other types of supervised loans. To allow a supervised lender to make such loans in a pawn shop would allow the lender to evade the specific limitations the legislature has set for loans in a pawn shop. When there is a conflict between statutes, specific laws prevail over more general laws and the most recent legislation takes precedence over earlier laws. See South Carolina Coastal Conservation League v. South Carolina Department of Health and Environment Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008).

In summary, the pawnbroker laws should prevent title or check loans in a pawn shop even if the lender has a supervised lender license. Also, the rates charged cannot exceed the statutory rate for pawnshops, and the loan amount cannot exceed \$2,000.

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Therefore, consistent with the above, in the opinion of this office, a licensed pawnbroker, who also holds a supervised lender license, would not be permitted to make a supervised loan in the same location that he operates his pawnbroker business. Of course, if your constituent is not satisfied with this response, he or she may consider seeking relief in the courts by way of a declaratory judgment.

With kind regards, I am,

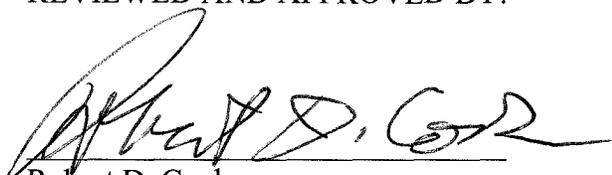
Very truly yours,

Henry McMaster
Attorney General



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