



ALAN WILSON  
ATTORNEY GENERAL

May 20, 2015

The Honorable Edward R. Tallon, Sr.  
House of Representatives, District 33  
402-A Blatt Building  
Columbia, SC 29211

Dear Representative Tallon:

You have requested a “formal opinion regarding whether a licensed deferred presentment lender may legally accept debit card payments for deferred presentment transactions under the Deferred Presentment Services Act.” You note that S.C. Code Ann. § 34-49-270(f) provides in pertinent part that “an item is paid in full when . . . the customer has redeemed the check with a cash payment in full.” (emphasis in original). The Act does not define the term “cash”. By way of background, you state the following:

Black’s Law Dictionary 208 (9<sup>th</sup> ed. 2009), defines cash as “1. Money or its equivalent. 2. Currency or coins, negotiable checks, and balances in bank accounts.” The word “cash” follows the Black’s Law Dictionary definition in other sections of the South Carolina Code. For instance, the secured transactions section of the Commercial Code defines “cash proceeds” as “proceeds that are money, checks, deposit accounts, or the like.” S.C. Code Ann. § 36-9-102(9). The South Carolina Family Independence Act allows the provision of “cash” assistance which is distributed by a SC ePAY Debit Card. See S.C. Code Ann. § 43-5-1110, et al.; see also South Carolina Department of Social Services, <https://dss.sc.gov/content/content/customers/finance/fi.aspx> (last visited, April 30, 2015). In addition, Title 38 of the South Carolina Code discusses cash for the purpose of disbursing insurance policies, where checks are commonly issued to pay out policies. See S.C. Code Ann. § 38-1-10, et al. Reading Black’s Law Dictionary in tandem with the Deferred Presentment Services Act and the above-mentioned sections of the South Carolina Code, it appears that debit card payments are encompassed within the meaning of “cash.”

With the above analysis in mind, I respectfully request that your office render a formal opinion regarding whether a debit card payment is an acceptable “cash” payment method under the Deferred Presentment Services Act.

#### Law/Analysis

As we have recognized many times, the fundamental principles of statutory construction may be summarized as follows:

“[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000) . . . “C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention.” State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct. App. 2011) . . .

Op. S.C. Att’y. Gen., September 18, 2013 (2013 WL 5494616). Moreover, our Supreme Court has recognized that the “true aim and intention of the legislature will be deemed controlling. . . .” Greenville Baseball Club v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). Further, where terms in a statute are not defined,

“[t]he legislature is presumed to have fully understood the meaning of the words used in a statute, and unless this meaning is vague or indefinite, [it is presumed] . . . it intended to use them in their ordinary and common meaning or in their well defined legal sense.”

Rorrer v. P.J. Club, Inc., 347 S.C. 560, 569, 556 S.E.2d 726, 731 (Ct. App. 2001).

As you point out, the word “cash” in its ordinary sense, includes “money or its equivalent,” such as a check. Merriam-Webster Dictionary (online). The word “debit card” is defined at Dictionary.com, as

A plastic card that resembles a credit card but functions like a check and through which payments for purchases or services are made electronically to the bank accounts of participating retail establishments directly from those of card holders.

Black’s Law Dictionary further provides that “cash” may be defined as: “1. Money or its equivalent. 2. Currency or coins, negotiable checks, and balances in bank accounts.” (emphasis added). Thus, under ordinary principles of statutory construction, the word “cash” would include a “debit card” because the funds in the cardholder’s bank account are “debited” for the amount purchased with the card.

In State v. Castillo, 252 P.3d 760, 764 (N.M. 2011), the Court concluded that a “debit card” was not a “credit card.” In Castillo, it was stated as follows:

[i]n this case, evidence was presented that debit cards are tied to individual checking accounts, as opposed to lines of credit or guarantee of payment by the issuing bank. Sherry DeFoor, the banking manager at Bank of America, testified that a “debit card” is different from a “credit card” because a “credit card” relies on a line of credit. In contrast, a “debit card” is tied to the individual cardholder’s checking account, and when the debit card is used, the money is taken directly out of that checking account. DeFoor further testified that the unauthorized use of Sando’s “debit card” resulted in a direct deduction from Sando’s available funds in her checking account.

It is our understanding that, for purposes of a debit card, there must be sufficient funds in the checking account to cover a purchase or the debit card transaction will be denied.

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Another court has emphasized that the definition of “cash” may not be limited to having a tangible possessory interest. As long ago as 1986, the Texas Court of Criminal Appeals noted that:

[t]he Court of Appeals reasoned that the “nature of cash money denies any possible nonpossessory interest.” However, in this advanced electronic era, money is frequently transferred without passing from the actual possession of one individual to another. Thus, we believe that cash money can in fact be appropriated by “transfer or purported transfer of title to or other nonpossessory interest in property.”

Coats v. State, 712 S.W.2d 520, 521 (Tex. Cr. App. 1986) (emphasis in original).

We do not see any provision in the Deferred Presentment Services Act specifying that payment may not be accepted through use of a debit card. S.C. Code Ann. Section 34-29-270(f) provides as follows:

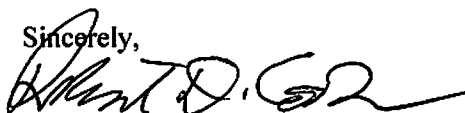
[a] licensee shall notify the database provider immediately when the licensee enters into a deferred presentment transaction with a person. The licensee shall submit to the database provider such information as the board requires. When the transaction is paid in full, the licensee shall designate the transaction is closed and immediately notify the database provider. When the database provider receives notification that the transaction is paid in full, the database provider immediately shall designate the transaction as paid in full in the database. For purposes of this subsection, an item is paid in full when the payor bank makes final payment on the customer’s check pursuant to Section 36-4-215 or the customer has redeemed the check with a cash payment in full.

While there is reference in this provision to a “cash payment in full,” we believe that, based upon the ordinary meaning of the term “cash,” payment through a debit card -- withdrawing funds directly from the borrower’s checking account -- would constitute a “cash payment in full.” It would, in our opinion, be unreasonable to restrict the statute entirely to currency or cash money in the traditional sense, inasmuch as a debit card is tied directly to funds in the cardholder’s checking account.

### Conclusion

Based upon the foregoing, well-recognized principles of statutory construction, it is our opinion that a debit card payment is an acceptable “cash” payment method under the Deferred Presentment Services Act. The statute must be given a common sense reading, rather than one limited entirely to currency or “cash money” in its traditional sense. The debit card is the equivalent of and meets the common and ordinary definition of “cash” in that it is tied to “balances in bank accounts.” Thus, payment made by use of a debit card would meet the requirements of the Act.

Sincerely,



Robert D. Cook  
Solicitor General