



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1998

The Honorable Kim Brimer
Chair, Committee on Business & Industry
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 98-084

Re: Whether dishonored check is "debt" for purposes of Texas Debt Collection Practices Act and federal Fair Debt Collection Practices Act (RQ-1153)

Dear Representative Brimer:

You ask us whether a dishonored check is a "debt" for purposes of the Texas Debt Collection Practices Act and the federal Fair Debt Collection Practices Act. We conclude that a dishonored check is a debt under both acts.

Because several federal courts have answered your question, we begin by examining the definition of "debt" in the federal Fair Debt Collection Practices Act. The Fair Debt Collection Practices Act prohibits a debt collector from using abusive, deceptive, or unfair practices for the purpose of collecting a debt from a consumer. *See* 15 U.S.C.A. § 1692, *et seq.* A "debt" under the federal act is "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." 15 U.S.C.A. § 1692a. Courts of Appeals for the Seventh, Eighth, and Ninth Circuits have held that a dishonored check is a debt under the act. *See Duffy v. Landberg*, 133 F.3d 1120 (8th Cir. 1998), *pet. for cert. filed*, 66 U.S.L.W. 3790 (May 27, 1998) (No. 97-1972); *Charles v. Lundgren & Assocs., P.C.*, 119 F.3d 739 (9th Cir.), *cert. denied*, 118 S.Ct. 627 (1997); *Ryan v. Wexler & Wexler*, 113 F.3d 91 (7th Cir.), *cert. denied*, 118 S.Ct. 298 (1997); *Bass v. Stomper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322 (7th Cir. 1997). The courts reasoned that the act unambiguously defines a debt as "any obligation" to pay money arising out of a consumer transaction. "[A] check evidences the drawer's obligation to pay for the purchases made with the check, and should the check be dishonored, the payment obligation remains." *Bass*, 111 F.3d at 1325. A dishonored check, consequently, is a debt within the plain meaning of the statute. *Id.* The courts found this conclusion to be consistent with the legislative history of the act. *See Bass*, 111 F.3d at 1326-28; *Duffy*, 133 F.3d at 1123-24.

We find the reasoning of the circuit courts persuasive. While the Court of Appeals for the Fifth Circuit, in whose jurisdiction Texas lies, has not yet spoken on this question, we believe the

Fifth Circuit would rule in accordance with the trend.¹ We conclude, therefore, that a dishonored check is a “debt” within the meaning of the federal Fair Debt Collection Practices Act.

We turn now to the Texas act. Chapter 392 of the Finance Code, known as the Texas Debt Collection Practices Act, like the federal law prohibits debt collectors from using coercive, threatening, abusive, and other repugnant practices for the purpose of collecting a consumer debt. A “consumer debt” is defined as “an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.” Fin. Code § 392.001. The essential definition of a debt, then, is “an obligation . . . arising from a transaction.”

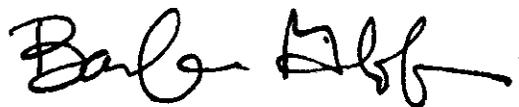
We know of only one court that has considered what constitutes a “debt” under the Texas act. *See Ledisco Fin. Serv., Inc. v. Virocola*, 533 S.W.2d 951 (Tex. Civ. App.--Texarkana 1976, no writ). *Ledisco* involved a credit card company’s efforts to retrieve a canceled credit card from a consumer. The court considered whether the consumer’s obligation to return the credit card upon cancellation was a “debt” as defined in V.T.C.S. article 5069-11.01 to 5069-11.12, the predecessor statute to the current act. The court, recognizing that “debt” was broadly defined as “any obligation” arising from a consumer transaction, held that the obligation to return the credit card was a debt. *Id.* at 955.

The reasoning applied in the federal cases cited above applies equally well to the definition of consumer debt in the Texas act. It is a general rule of Texas law that when a creditor accepts a check in payment of an obligation, the check amounts only to a conditional payment of the obligation. If the check is dishonored, the original obligation still remains. *See Meaders v. Biskamp*, 316 S.W.2d 75, 77 (Tex. 1958); *see also* Bus. & Com. Code § 3.310 (allowing creditor to sue on either check or underlying obligation when check is dishonored). A dishonored check is therefore a debt within the plain meaning of the Texas Debt Collection Practices Act.

S U M M A R Y

A dishonored check is a “debt” for purposes of the Texas Debt Collection Practices Act and the federal Fair Debt Collection Practices Act.

Yours very truly,



Barbara Griffin
Assistant Attorney General
Opinion Committee

¹It was argued in *Bass* and other cases that the Fair Debt Collection Practices Act applies only to a debt that arises from an extension of credit to a consumer, and thus would not apply to a transaction negotiated with a check. This argument relied on *Zimmerman v. H.B.O. Affiliate Group*, 834 F.2d 1163 (3d Cir. 1987), in which the Third Circuit stated, without discussion or reasoning, that a transaction does not create a “debt” under the act unless it involves the extension of credit. The *Bass* court and others disagreed with *Zimmerman* as being contrary to the plain language of the act and its legislative history. We do not think the Fifth Circuit would rely upon *Zimmerman*.