

October 19, 2009

Archer B. Battista, Esquire  
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Whitney Place  
14 Bobala Road  
Holyoke, MA 01040

Dear Mr. Battista:

This letter is in response to your correspondence dated February 4, 2009 to the Division of Banks (the "Division") on behalf of the Springfield Parking Authority (the "Parking Authority"). In your correspondence you request an opinion as to whether certain activities the Parking Authority arranges to conduct through a third party, specifically, the collection of unpaid parking tickets, fines and costs associated with said tickets, such as the cost of towing or immobilizing vehicles by a mechanical device pursuant to Massachusetts General Laws chapter 90, section 20A, require the Parking Authority to be licensed as a debt collector pursuant to Massachusetts General Laws chapter 93, sections 24 to 28, inclusive, and its implementing regulations 209 CMR 18.00 et seq.

In your correspondence you refer to the fact that in 1997 the Division rendered an opinion on this subject, Opinion 97-177, but because of the age of the Opinion and the fact that significant amendments to Massachusetts General Laws chapter 93, section 24 took place in the year 2004, you inquire whether Opinion 97-177 remains in force.

Massachusetts General Laws chapter 93, section 24A(a) states, "No person shall directly or indirectly engage in the commonwealth in soliciting the right to collect or receive payment for another of an account, bill or other indebtedness, or advertise for or solicit in print the right to collect or receive payment for another of an account, bill or indebtedness, without first obtaining from the commissioner a license to carry on the business, nor unless the person or person for whom he or it may be acting as agent has on file with the state treasurer a good and sufficient bond.

"Debt" is defined pursuant to the statute as follows: "Debt, 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 the obligation has been reduced to judgment."

At least one court has failed to conclude that the receipt of a parking ticket, which is a legally imposed fine, can constitute a consumer transaction and, therefore, fall within the

provisions of the Fair Debt Collection Practices Act (“FDCPA”)<sup>1</sup>. The Division agrees with that reasoning. Accordingly, it is the position of the Division that a lawfully assessed parking fine is not a “debt” under Massachusetts General Laws chapter 93, section 24 because there is no “transaction” that took place between the individual and the municipality. The assessment of taxes or fines by a municipality arises from its authority as a sovereign entity and not as the seller of goods and services. Additionally, the Federal Trade Commission Staff Commentary to the FDCPA also concludes that a “debt” does not include such a fine.

Although issued under a different statutory structure than existing, Opinion 97-177 is reaffirmed herein. Although the agent of the Springfield Parking Authority will be sending notices and collecting on behalf of the City of Springfield, the unpaid parking tickets or summonses do not meet the definition of debt under the statute. Accordingly, the Springfield Parking Authority’s agent or contractee to the extent it engages in the collection of unpaid parking tickets will not be collecting debts under the statute, and it will not be required to be licensed as a debt collector in order to conduct these activities in the Commonwealth.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from those presented may result in a different position statement by the Division.

Sincerely,

Joseph A. Leonard, Jr.  
Deputy Commissioner of Banks  
and General Counsel

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<sup>1</sup> The United States District Court for the District of Minnesota considered this question in the case of Chester C. Graham v. ACS State and Loan Solutions, Inc. d/b/a/ LDC Collections Systems, Civ. No. 06-2708 (JNE/JJG).