



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable John C. Watkins
Member, Senate of Virginia
Post Office Box 158
Midlothian, Virginia 23113

Dear Senator Watkins:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask two questions related to the permissible methods a motor vehicle title lender may use to disburse loan proceeds from a motor vehicle title loan under § 6.2-2215(7) of the *Code of Virginia*. You first ask whether the statute, by stating that a lender may disburse the proceeds "by debit card," allows a licensee to disburse loan proceeds to a borrower through a debit card transaction in which the borrower's bank account is credited with the amount of the loan. Secondly, you ask whether the statute, which allows a licensee to disburse loan proceeds "in cash," permits a licensee to disburse loan proceeds by electronic funds transfer to the borrower's deposit account.

Response

It is my opinion that a motor vehicle title lender may not disburse loan proceeds through a debit card transaction in which the borrower's bank account is credited with the amount of the loan. It is further my opinion that a motor vehicle title lender may not disburse loan proceeds through an electronic funds transfer to the borrower's deposit account.

Applicable Law and Discussion

Section 6.2-2215(7) of the *Code of Virginia* provides, in relevant part, that a motor vehicle title lender shall disburse loan proceeds "(i) in cash, (ii) by the licensee's business check,^[1] or (iii) by debit card provided that the borrower will not be directly charged a fee by the licensee in connection with the withdrawal of the funds." The term "debit card" is not defined in § 6.2-2200, the definition section applicable to § 6.2-2215. "An undefined term must be given its ordinary meaning, considered in the

¹ "Licensee" in this provision refers to a business operating and licensed by the State Corporation Commission as a motor vehicle title lender under Chapter 22 of Title 6.2 of the *Code of Virginia*, "Motor Vehicle Title Loans." See VA. CODE ANN. § 6.2-2200 (2010) (defining "licensee") and § 6.2-2201 (Supp. 2012) (requiring licensure by the Commission).

context in which the term is used.”² “Debit card” is commonly defined as “[a] card used to pay for purchases by electronic transfer from the purchaser’s bank account.”³ Nevertheless, the context in which the term “debit card” is used in the statute compels me to conclude that the General Assembly intended the term to have a different meaning.

“Every part of a statute is presumed to have some effect and no part will be treated as meaningless unless absolutely necessary.”⁴ Section 6.2-2215(7) authorizes the loan proceeds to be disbursed by debit card “provided that the borrower will not be directly charged a fee by the licensee in connection with the withdrawal of the funds.” Obviously, upon disbursement of the loan proceeds, a motor vehicle title lender has no ability to charge a fee to a borrower for the withdrawal of specific funds from the borrower’s own bank account by using a debit card issued by the borrower’s deposit bank. Thus, interpreting the statute to permit the disbursement of the proceeds to a borrower’s account through a debit card transaction would render meaningless the limitation on the charging of a fee for the withdrawal of funds. I therefore conclude that the General Assembly did not intend to allow a motor vehicle title lender to disburse loan proceeds through a debit card transaction in which the borrower’s bank account is credited with the amount of the loan.

This conclusion is supported by the manner in which the State Corporation Commission implements the statute’s provisions.⁵ In the regulations it issued that apply to motor vehicle title lenders, the State Corporation Commission requires such lenders to give the borrower an informational pamphlet.⁶ The text of this mandated pamphlet makes clear that the State Corporation Commission construes the authorization to disburse proceeds “by debit card” to mean giving the borrower a physical card with a prepaid value equal to the amount of the loan proceeds.⁷ This construction, which allows a lender to disburse the proceeds by giving the borrower a physical, prepaid card, also gives full meaning to the limitation on lenders charging a fee for the withdrawal of funds, as the limitation will prevent the lender from imposing a fee when the card is used or the proceeds withdrawn.⁸ Because this construction gives meaning to the full statute, it is preferred. Thus, if a motor vehicle title lender wishes to disburse the loan proceeds by debit card, it must provide the borrower with a card prepaid with the amount of the loan

²Murphy v. Norfolk Cmty. Servs. Bd., 260 Va. 334, 339, 533 S.E.2d 922, 925 (2000) (citing Sansom v. Bd. of Supvrs., 257 Va. 589, 594–95, 514 S.E.2d 345, 349 (1999); Stevenson v. City of Falls Church, 243 Va. 434, 437, 416 S.E.2d 435, 437 (1992); Commonwealth v. Orange-Madison Coop. Farm Serv., 220 Va. 655, 658, 261 S.E.2d 532, 533–34 (1980)).

³BLACK’S LAW DICTIONARY 461 (9th ed. 2009); see MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 320 (11th ed. 2003) (defining the term as “a card like a credit card by which money may be withdrawn or the cost of purchases paid directly from the holder’s bank account without the payment of interest”).

⁴Sims Wholesale Co. v. Brown-Forman Corp., 251 Va. 398, 405, 468 S.E.2d 905, 909 (1996) (citing Raven Red Ash Coal Corp. v. Absher, 153 Va. 332, 335, 149 S.E. 541, 542 (1929)).

⁵ Generally, deference should be given to the interpretation given to the statute by the agency tasked with its administration. the State Corporation Commission is the agency with the authority to license motor vehicle title lenders and the authority to issue regulations applicable to motor vehicle title lenders. See VA. CODE ANN. §§ 6.2-2201, 6.2-2214 (2010 & Supp. 2012)

⁶10 VA. ADMIN. CODE § 5-210-30(A) (2012).

⁷*Id.* § 5-210-30(D) (“You will receive your loan proceeds in the form of . . . (iii) a debit card If you receive a debit card, the motor vehicle title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.”)

⁸ *Id.*

proceeds, which later can be withdrawn when the card is used. As concluded above, the lender may not disburse the proceeds through a debit card transaction in which the borrower's bank account is credited.

You also ask whether a lender may disburse the proceeds through an electronic funds transfer to the borrower's bank account because the statute also allows a lender to disburse the loan proceeds "in cash."⁹ As the term "cash" is also undefined by the statute, it must be given its ordinary meaning considered in the context in which it is used.¹⁰ "Cash" is defined as "money or its equivalent" and as "currency or coins, negotiable checks, and balances in bank accounts."¹¹ The first definition of "cash," which is essentially restricted to paper currency and coins, is much more restrictive than the second, which includes checks and balances in bank accounts. It is necessary to determine whether the General Assembly intended the term "cash" to have the more restrictive or more expansive meaning. The context of the statute shows that it clearly intended the more restrictive definition to apply. Specifically, the General Assembly's inclusion of the option to disburse the proceeds "by the licensee's business check," a method that would be included within the more expansive definition of "cash," demonstrates that it intended the term to be restricted to currency and coins.¹²

Conclusion

Accordingly, it is my opinion that a motor vehicle title lender may not disburse loan proceeds to a borrower through a debit card transaction in which the borrower's bank account is credited with the proceeds. It is further my opinion that a motor vehicle title lender also may not disburse loan proceeds through an electronic funds transfer to a borrower's account.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C. II". The signature is written in a cursive style with a large "K" and "C".

Kenneth T. Cuccinelli, II
Attorney General

⁹VA. CODE ANN. § 6.2-2215(7) (Supp. 2012).

¹⁰*Murphy*, 260 Va. at 339, 533 S.E.2d at 925.

¹¹BLACK'S LAW DICTIONARY 245 (9th ed. 2009); see MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 191 (11th ed. 2003) (defining "cash" as "ready money" or "money or its equivalent (as a check) paid for goods or services at the time of purchase or delivery").

¹² "The meaning of a word . . . takes color and expression from the purport of the entire phrase of which it is a part, and it must be construed so as to harmonize with the context as a whole." *Kohlberg v. Va. Real Estate Comm'n*, 212 Va. 237, 239, 183 S.E.2d 170, 172 (1971) (explaining doctrine of *noscitur a sociis*, a canon of construction based on Latin phrase meaning "it is known by its associates," BLACK'S LAW DICTIONARY 1084 (7th ed. 1999)). See also *Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236-37, 435 S.E.2d 382, 384 (1993) (noting that words in statute are construed according to context in which they are used and by considering language used in the statute and in other statutes dealing with closely related subjects).