

STATE OF COLORADO

Department of Law

COLLECTION AGENCY BOARD

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Laura E. Udis
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December 11, 1991

RE: Collection of Interest on Dishonored Checks

Dear :

You have asked whether a collection agency may assess and collect interest on a dishonored check, and more specifically whether interest may be included on notices a collection agency mails to a consumer. This is an informal opinion only, and shall not be considered a formal advisory opinion pursuant to section 12-13-113(5), C.R.S. (1985).

Two initial questions are presented: (1) Does section 13-21-109, C.R.S. (1991 Supp.) authorize the collection of interest on dishonored checks? and (2) Does section 5-12-101 to -102, C.R.S. (1991) authorize the collection of interest on dishonored checks?

DISHONORED CHECK LAW

Section 13-21-109 is silent with regard to the collection of interest on dishonored checks.**1 However, as originally enacted in 1967, the dishonored check law included a provision for interest. See 1967 Colo.Sess.Laws 827, 828 sections 1 & 3. That law was repealed and reenacted in 1989, and the reference to interest was deleted. 1989 Colo.Sess.Laws 574 section 1.**2

1**For your convenience a copy of the statute is attached.

2**During the 1989 Colorado legislative session, two bills were proposed to amend the dishonored check law. Both bills included a provision for interest. See H.B. 1065, 57th Colo.Gen.Ass., 1st Sess. (1989) (provided for treble damages with interest at the legal rate and costs of collection not exceeding fifteen percent of the face value of check and not less than \$15); S.B. 83, 57th

Amended section 13-21-109 also differs from prior versions of the dishonored check law in that it discusses three remedies.**3 Sub-section (1)(a) refers to the remedies available to a seller of goods covered by the provisions of the Uniform Commercial Code.**4 Sub-section (1)(b) sets forth the only statutory non-judicial remedy available to collection agencies. It permits a collection agency to recover the face amount of the check, any return check charge not over \$20, and collection costs up to twenty percent of the face amount of the check but not less than \$20.**5 Subsection (3) provides for the collection of treble damages in a civil action, along with attorneys fees and costs.

The legislature made substantial changes in the dishonored check law when it amended section 13-21-109. When a statute is amended, the legislature is presumed to have intended to change the law. Charnes v. Lobato, 743 P.2d 27, 30 (Colo. 1987). Where,

Colo.Gen.Ass., 1st Sess. (1989) (provided for treble damages, interest and costs of collection). After the first reading of these bills, they were assigned to a Joint House and Senate Committee for review and revision. The Committee submitted to the legislature an amended version of H.B. 1065. That bill was eventually adopted with only a few floor changes (which changes are not relevant to this discussion).

3**Prior versions of this law addressed only the remedy of treble damages.

4**Any award of pre-judgment interest would presumably include incidental damages pursuant to section 4-2-710, C.R.S. (1973) and prejudgment interest.

5**It is interesting to note with regard to the non-judicial remedy that a collection agency is permitted to seek costs of collection not exceeding twenty percent. H.B. 1065 as introduced initially proposed collection costs of fifteen percent. The percentage of collection costs allowed was apparently changed by the Joint Committee. As the statutory interest rate is eight percent, it is possible that the five percent change in the amount of collection fees permitted and deletion of any reference to interest represented a compromise between the Joint Committee members. However, their discussions were not recorded.

as here, the statutory language is clear and unambiguous it may be reasonably presumed that the General Assembly meant what the statute clearly says. Woodsmall v. Regional Transport. Dist., 800 P.2d 63, 67 (Colo. 1990).**6 I therefore conclude that section 13-21-109 does not authorize the collection of interest.

PRE-JUDGMENT INTEREST STATUTE

An issue also arises as to whether sections 5-12-101 to -102, C.R.S. (1973 & 1991 Supp.), independently authorize a collection agency to assess, collect or pursue a judicial award of interest.

Clearly section 5-12-101 does not grant any right to interest.**7 It merely specifies the rate of interest to be applied when the statute or agreement granting a right to interest does not state the rate. For instance, some statutes and agreements may simply state "with interest" or "interest at the statutory rate." Section 5-12-101 provides that interest will accrue at a rate of eight percent per annum. A contrary conclusion would permit interest to accrue in all instances and would remove the need to specify statutorily those instances in which interest is permitted. See York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 384-85, 443 P.2d 986, 987 (1968) (the right to interest, absent some agreement to pay it, is governed by statute; interpreting section 5-12-102).

Section 5-12-102, on the otherhand, outlines the circum-

6**A review of dishonored check laws in other states indicates that a specific provision for interest is included in nine state statutes (Illinois, Indiana, Maine Minnesota, Tennessee, Utah, Vermont, Washington and Vermont). However, only two states permit interest, along with a treble damage award -- Indiana and Washington. Those laws are much stricter on the maker of the check than Colorado's law.

7**Section 5-12-101 states:

Legal rate of interest. If there is no agreement or provision of law for a different rate, the interest on money shall be at the rate of eight percent per annum, compounded annually.

stances under which a creditor is entitled to receive pre-judgment interest.**8 However, even section 5-12-102 does not authorize a creditor to assess and collect interest without the filing of a civil action to recover damages. It only applies to pre-judgment interest awards.**9 Even if a civil action was contemplated wherein the collection agency would seek a pre-judgment interest award, it would not be appropriate to include a calculation for interest on any notices sent to the consumer until a court has actually awarded the interest.**10

CONCLUSIONS

For the reasons stated herein, it is my opinion that neither section 13-21-109 nor sections 5-12-101 to -102 generally authorize a collection agency to assess or collect interest on a dishonored check. It is also my opinion that a collection agency may not include a calculation for interest on the first

8**A copy of that statute is attached.

9**For purposes of this discussion I will not analyze the language of section 5-12-102 to determine whether a collection agency is a "creditor" and whether a dishonored check is: (1) "money or property wrongfully withheld" as required by subsection (1); or (2) "a bill, bond, promissory note, or other instrument of writing, or money due on mutual settlement of accounts" as required by subsection (2). A court would have to make those determinations, and it would not be useful in this discussion to speculate about the results.

10** It seems unlikely that pre-judgment interest would be allowed in a treble damages action because courts have declined to award pre-judgment interest on exemplary damage awards, which are similar in nature to a treble damages award. See Great Western Sugar Co. v. KN Energy, Inc., 778 P.2d 272, 276 (Colo.App. 1989) (to the extent that an award under the statute provides double compensation for the same wrong, it cannot stand); Coale v. Dow Chemical Co., 701 P.2d 885, 890 (Colo.App. 1985) (pre-judgment interest not awarded on punitive damages award). Further, the fact that section 13-21-109 specifically allows for attorneys fees and court costs (without specifying interest) would seem to indicate a legislative intent to exclude interest.

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notice mailed to the maker of a dishonored check absent some contractual agreement between the original creditor and the issuer regarding the assessment and collection of interest. Please feel free to contact me if you have any further questions regarding this matter.

Sincerely,



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