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ADVISORY RULING #50
DECEMBER 19, 1980

December 19, 1980

Dear

You have requested a ruling from the Bureau concerning the rule for billing for merchandise certificates contained in Section 2-201(4) of the Code. Specifically, you ask whether the prohibition in 2-201(4) is applicable to open-end credit sales and, if so, how this would interact with Section 7-119(2)(B) concerning periodic billing disclosures.

Section 2-201(4) contains a nonuniform amendment to the UCCC with the addition of the second sentence:

> "For the purposes of this section, a sale agreement does not commence upon the transfer of merchandise certificates, but commences only upon the date goods are delivered or services performed."

This nonuniform amendment does not appear in Section 2-202, (sales pursuant to open-end credit).

The sparse legislative history to the Code indicates that:

(1) The nonuniform amendment first appeared in L.D. 1803 (106th Legislature) and was retained in L.D. 2451 (106th Legislature, Special Session) which formed the basis for L.D. 2582, enacted as P.L. 1974, c. 762.

(2) The Report and Supplemental Report of the Business Legislation Committee on the Maine Consumer Credit Code (undated) which accompanied L.D. 2451 lauded the amendment at issue here in a list of new consumer protections contained in the Maine Consumer Credit Code: "Sellers of merchandise certificates could charge interest only after the goods were delivered. Many now charge interest as soon as the certificate is delivered, even though the consumer has not yet received the return value." (p. 9) No distinction was made in these comments between closed and open-end credit.

(3) Prof. Spanogle's comments on merchandise certificates contained in his review of the MCCC also fail to distinguish between open-end and closed sales: "Thus, merchants who sell merchandise certificates on credit will have to create a system which allows them to identify the certificates when they are redeemed, and begin to charge interest only at that time." (26 Me. L. Rev. 173, 194 (1974)).

Whatever the intent (and I think the intent may have been to impose the rule in a uniform way), the fact remains that the amendment was only added to Section 2-201 and even included the phrase, "For the purposes of this section..." Therefore, I do not believe that I can "insert" Section 2-201(4) into Section 2-202.

We are left with a rule that prohibits the creation of a credit agreement until the merchandise certificate is redeemed when a closed-end consumer credit sale only is made. In a sale pursuant to seller credit card, the merchant may debit the customer's account when the certificate is bought. Consumers may avoid finance charges in this latter situation only by taking advantage of the 25-day grace period rule in Section 2-202(5).

Since there is no delayed billing required on the open-end sale situation, it is no longer necessary to address your question concerning Section 7-119(2)(B).

I realize this result conflicts with advice given by the Bureau staff at our Workshop in Portland on November 4, 1980. I apologize for the conflict, but your written comments triggered a more thorough review. I am aware of the potential Truth in Lending problems that may occur as a result of reliance on the Bureau's informal comments at the Workshop and in recent examinations. As far as the Bureau is concerned, we will view periodic billing disclosures (pursuant to Section 7-119(2)(B) of the Code) made in conformance with our earlier advice as constituting a valid good faith defense to violation under Section 7-122(3). Also, you should be aware that the Bureau intends to seek a correction of this anomaly by means of an amendment to bring Section 2-202 (open-end credit sales) within the rule stated in 2-201(4).

Sincerely,

Barbara R. Alexander
Superintendent

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