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Mon, Aug. 27, 2007

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State contends store broke law by cashing checks for \$1 fee

Monday, Aug 27, 2007

By John Lyon

Arkansas News Bureau

LITTLE ROCK - For nearly 41 years, Lake Liquor Store near Maumelle offered check-cashing as a service to its customers.

Owner Geneva Bevens said the fees she charged - \$1 for checks up to \$300, \$2 for checks from \$300 to \$600 - were not enough to cover the cost of gas to drive to the bank with the checks, but customers appreciated the service.

"When you're in business, 90 percent of the customers that come in and trade with you don't have a checking account. They'd tell you they didn't have a checking account and (ask), 'Would you cash my payroll check?' she said in an interview with the Arkansas News Bureau.

Bevens recently stopped cashing customers' paychecks after the State Board of Collection Agencies told her she was breaking the law. The board contended Bevans was operating a check-cashing business without a permit.

"I think I got a dirty deal out of the Board of Collection Agencies, because I didn't think I was doing anything wrong," Bevans said.

Bevens said her legal troubles began when the state Alcoholic Beverage Control Division contacted her about six months ago and said it had received a complaint about her business from Maumelle police. ABC maintained Bevans was in violation of a 1971 state law prohibiting liquor stores from carrying on any other type of business.

This was news to Bevans.

"I had been cashing checks, but we'd been doing it for 40 years. When you do something for 40 years and nothing's been said about it, you don't think there's anything wrong about it," she said.

Bevens hired a lawyer and contested the issue. Eventually ABC acknowledged that her business predated the law and had been grandfathered in, so there was no violation.

But the State Board of Collection Agencies, which regulates check-cashing businesses, told Bevans her store was violating another state law that requires check-cashing businesses to be

permitted and regulated by the board.

Bevans said her lawyer advised her that her business was exempt from the check-casher law, which excludes any business that cashes checks for a fee "as a service to its customers that is incidental to its main purpose or business, so long as revenue from such fees does not exceed 3 percent of such retail seller's gross revenues."

"The liquor store's position has always been that they are not in violation of any law," Bevans' attorney, Joe Falasco of Little Rock, said Friday.

The board disagreed, claiming that because customers sometimes cashed checks without making a purchase, check-cashing was not incidental to the store's main business, so the exemption did not apply.

Falasco asked state Rep. David Johnson, D-Little Rock, to request an attorney general's opinion on the question of whether a business must be regulated as a check casher if it cashes checks for customers who do not also purchase goods in the same visit.

Businesses throughout the state that cash customers' checks had good reason to be interested in the answer. Being classified as a check casher can be costly: A check casher is required to post a \$50,000 surety bond, pay \$500 to obtain a permit and another \$400 each year to renew the permit, maintain liquid assets of at least \$20,000 at all times and be subject to audits, for which the business pays the costs.

Attorney General Dustin McDaniel issued an opinion that said in part, "I believe a retailer of consumer or other goods need obtain a permit as a 'check casher' only if it realizes more than 3 percent of its gross revenue from check-cashing fees. In my opinion, whether or not the customer makes a purchase while cashing a check is of no consequence to the issue."

But McDaniel also commented that the law is "hardly a model of clarity."

Peggy Matson, executive director of the State Board of Collection Agencies, said Friday the board has not decided whether to change its position in light of McDaniel's opinion. Attorney generals' opinions are not binding, she noted.

"We're still studying it. We have not reached a resolution with Lake Liquor yet," she said.

Johnson said Friday he agrees with McDaniel's opinion. While it is true that attorney generals' opinions are not binding, "they carry a great deal of weight," he said.

Bevans just wants a definite answer, one way or the other.

"I'd like to get this settled once and for all," she said. "I'm not in real good health, and I really don't need all this."