



OFFICE OF THE
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STATE CAPITOL
Phoenix, Arizona 85007

R75-90
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ATTORNEY GENERAL

75-54

March 26, 1975

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Ms. Betty Peck
Collection Agency Licensing
Office of the Secretary of State
State House
Phoenix, Arizona 85007

Re: Opinion R-75-90

Dear Ms. Peck:

You have asked whether a debtor can be asked to give postdated checks to collection agencies.

The answer to your question is "Yes".

A.R.S. § 44-2504(B)(2) (Uniform Commercial Code, hereinafter referred to as U.C.C.) Section 3-104 statutes that a check is a negotiable instrument if it is a draft drawn on a bank and payable on demand. A.R.S. § 44-2514 (U.C.C. § 3-114) states in part:

A. The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

B. Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

Numerous court cases have uniformly held that postdating a check in effect gives an extension of credit, and is a mere promise to discharge a present obligation at a future date, but that it does not destroy the negotiability of the instrument. Commonwealth v. Kelinson, 199 Pa. Super. 135, 184 A.2d 374 (1962); Eckley v. Steinbrecker, 482 P.2d 392 (Colo. C.A. 1971) and How v. Fulkerson, _____ Ariz. App. _____,

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528 P.2d 833 (1974). Therefore, the practice of postdating checks is not unauthorized, nor illegal.

Finally, if a bank cashes a postdated check prior to its stated date, it appears the bank would be cashing such a check at its own peril, in that the depositor would have the right to place a stop order on such check up to the stated date. Roland v. Republic National Bank of Dallas, 463 S.W.2d 747 (Court of Civ. App. Tex 1971).

Sincerely,

BRUCE E. BABBITT
Attorney General

MICHAEL M. SOPHY
Special Assistant Attorney
General

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