

AARON D. FORD
Attorney General

CAROLINE BATEMAN
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

March 29, 2019

OPINION NO. 2018-10

COMMISSIONERS:

PROPOSED ORDINANCE:

COLLECTION/ENFORCEMENT:

When performing official duties within the scope of the authority conferred by an ordinance adopted pursuant to NRS 244.3605, a county official or employee who attempts to collect administrative fines will not be subject to the federal Fair Debt Collection Practices Act.

Stephen B. Rye
Lyon County District Attorney
31 South Main Street
Yerington, Nevada 89447

Dear District Attorney Rye:

You have requested an opinion from the Attorney General's Office as to the applicability of the federal Fair Debt Collection Practices Act in situations involving collection action by government employees. Your question pertains specifically to an administrative fine provision in a proposed ordinance (Proposed Ordinance) under consideration by the Lyon County Board of Commissioners (Board). If adopted, the Proposed Ordinance will authorize Lyon County officials to impose and collect administrative fines as a means of recovering or defraying costs incurred by the county in

Stephen B. Rye
Lyon County District Attorney
Page 2
March 29, 2019

the enforcement of its nuisance abatement program. You have provided a copy of the Proposed Ordinance along with your analysis of the pertinent legal issues.

QUESTION

Will the Fair Debt Collection Practices Act govern county officials or employees who attempt to collect administrative fines imposed pursuant to the Proposed Ordinance?

BACKGROUND

NRS 244.3605 authorizes county commissioners in the State of Nevada to enact an ordinance establishing procedures for the abatement of public nuisances “to protect the health, safety and welfare of the residents of the county.” To bolster its code enforcement program, the Board is considering the adoption of the Proposed Ordinance. If adopted, the Proposed Ordinance will authorize county officials to impose and collect administrative fines, and possibly other types of assessments, as a means of recovering or defraying costs incurred by the county to abate nuisances.¹

The Proposed Ordinance describes procedures through which the county will provide notice to a “responsible person” of an alleged nuisance and the amount of the administrative fine to be imposed. See Proposed Ordinance, §§ 1.18 and 1.18.02(A) and (B). Enforcement officials, defined to include the sheriff, fire chief, code enforcement officer, or their authorized designee, will have discretion to determine whether the alleged nuisance

¹ The Proposed Ordinance refers alternatively to both “fees” and “fines.” It is not clear whether these terms are synonymous, or whether they refer to separate types of assessments. For purposes of this opinion, we have assumed that they are synonymous, and thus we use the term “fine” throughout. Additionally, we offer no opinion as to whether NRS 244.3605 authorizes the county to impose fines or other assessments in the manner contemplated by the Proposed Ordinance.

requires enforcement action by the county against the responsible person. *See id.* at § 1.18(C).

Under section 1.18.02 of the Proposed Ordinance, the county will also have the authority to impose administrative fines for the following acts or omissions:

1. Violation of the provisions of any title or chapter of this code;
2. Failing to comply with any order issued by a hearing officer;
3. Failing to comply with any condition imposed by any permit or environmental documents issued or approved by the county; and
4. Violation of any portion of this code process or procedure to determine the need for a special use permit, conditional use permit, temporary use permit, or variance.

Section 1.18.04 of the Proposed Ordinance authorizes the county to impose fines ranging from \$100 to \$1,000, increasing in amount from the first to a potential third citation. At section 1.18.04(B), the Proposed Ordinance requires the county to post a schedule of applicable administrative fines. Once imposed, these fines will be collected by designated county officials or employees.

ANALYSIS

The Fair Debt Collection Practices Act (FDCPA) was enacted in 1977 and became effective in 1978 as Title VIII of the Consumer Credit Protection Act. It is designed to “eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C.A. § 1692e.

The FDCPA solely regulates the conduct of debt collectors, *see Obdusky v. McCarthy & Holthus LLP*, 586 U.S. ___, 2019 WL 1264579, at *1 (March 20, 2019), imposing various requirements on their debt collection

activities, *see e.g.*, 15 U.S.C.A. § 1692c (governing communications between debt collectors and consumers), § 1692d (prohibiting harassment or abuse by debt collectors), § 1692e (prohibiting false or misleading representations by debt collectors), and § 1692k (subjecting debt collectors to civil liability for noncompliance). Pursuant to 15 U.S.C.A. § 1692a(6)(C), the term “debt collector” excludes “any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties.”

When performing official duties within the scope of the authority conferred by the Proposed Ordinance and NRS 244.3605, a county official or employee who attempts to collect administrative fines will not be considered a “debt collector” as defined by section 1692a(6)(C) of the FDCPA. For this reason, such an official or employee will not be subject to the provisions of the FDCPA.

In addition to excluding government employees performing their official duties, the statutory definition of “debt collector” is further qualified as follows:

The term ‘debt collector’ means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

15 U.S.C.A § 1692a(6).

Under the above definition, debt collection is not governed by the FDCPA unless it is “the principal purpose” of a business, or undertaken by a person who “regularly” engages in such activity. *See id.* Since the county will not collect administrative fines as a principal purpose of any business, its employees will not be considered debt collectors unless they regularly collect administrative fines on the county’s behalf. Therefore, the provisions of 15

Stephen B. Rye
Lyon County District Attorney
Page 5
March 29, 2019

U.S.C.A § 192a(6) potentially offer a second basis for exempting county employees from the FDCPA.

Finally, a valid claim under the FDCPA must involve a consumer debt, specifically one that arises from a consumer transaction. *See e.g.* 15 U.S.C.A. §§ 1692a(5), 1692c, 1692d, 1692e, and 1692k. A consumer transaction occurs when a consumer is offered or extended the right to acquire “money, property, insurance, or services ... primarily for household purposes” and to defer payment or repayment. *See* 15 U.S.C.A. § 1692a(5); *Anderson v. AFNI, Inc.*, 2011 WL 1808779, at *13 (E.D. Pa. 2011).

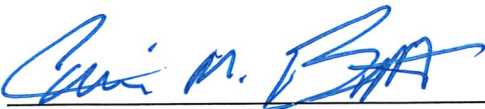
The county’s attempts to collect administrative fines will not implicate any consumer transactions because the county will not offer or extend any credit to consumers for their acquisition of consumer or household goods. This is a third reason why the FDCPA will not apply to collection action taken pursuant to the Proposed Ordinance.

CONCLUSION

When performing official duties within the scope of the authority conferred by the Proposed Ordinance and NRS 244.3605, a county official or employee who attempts to collect administrative fines will not be subject to the Fair Debt Collection Practices Act.

Sincerely,

AARON D. FORD
Attorney General

By: 
Craig M. Burkett
Senior Deputy Attorney General

CMB/klr