

Barbara Reid Alexander
3731
SUPERINTENDENT

(207)289-

Offices located at:

Harry W. Giddinge
Building
DEPUTY SUPERINTENDENT
Hallowell Annex

Central

Hallowell,

Maine



DEPARTMENT OF BUSINESS REGULATION
BUREAU OF CONSUMER PROTECTION
STATE HOUSE STATION 35
AUGUSTA, MAINE 04333

ADVISORY RULING #51
JANUARY 6, 1981

January 6, 1981

Dear

You have requested a ruling from the Bureau on whether a collection agency can contract for and charge a fee to the debtor for checks that are returned for insufficient funds.

Assuming that the debtor makes payment directly to the collection agency, 32 M.R.S.A. § 576 would prohibit such a charge:

"No collection agency shall...collect or attempt to collect from any person an amount in excess of the amount submitted by the creditor for collection."

The clear purpose intended by this rule is to prohibit the collection agency from changing (adding) in any way the amount of the debt as stated by the creditor. There would be potential for real abuse, as you can imagine, without this rule. I see no room in the statutory language for an exception.

If a merchant, with regard to cash customers, accepts checks with a condition that a fee will be imposed for a bounced check, the Code does not of course apply.

If a creditor seeks to impose a fee for a bounced check, the Consumer Credit Code would apply. Section 2-507 prohibits the imposition of "collection costs." In addition, Section 3-402 prohibits any default charge other than specific charges not applicable here. The creditor could, of course, continue to treat the account as unpaid and, with respect to simple interest contracts, charge interest for the unpaid period or, with respect to a precomputed contract, charge a late fee according to Section 2-502.

I hope this responds to your request.

Sincerely,

/s/ Barbara R. Alexander

Barbara R. Alexander
Superintendent

BA:as