



STATE OF CALIFORNIA

## Department of Business Oversight

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

IN REPLY REFER TO:

FILE NO: \_\_\_\_\_

June 29, 2020

**VIA E-MAIL ONLY**

Re: \_\_\_\_\_ – Opinion Request

Dear Ms. \_\_\_\_\_:

Thank you for your letter dated September 30, 2019 to Jonathan Lee, Assistant Deputy Commissioner of the Money Transmitter Division in the Department of Business Oversight. Your letter on behalf of \_\_\_\_\_ (“\_\_\_\_\_”) and its wholly-owned subsidiary \_\_\_\_\_ (“\_\_\_\_\_”) requests an interpretive opinion regarding the applicability of the Money Transmission Act (“MTA”) to \_\_\_\_\_’s \_\_\_\_\_ Transactions. You assert that the \_\_\_\_\_ Transactions are exempt from the MTA because \_\_\_\_\_ acts as an agent of an exempt entity and \_\_\_\_\_ operates a payment system between exempt entities.

### **BACKGROUND**

\_\_\_\_\_ provides automated technology and payment solutions to state and county correctional facilities and sheriff’s offices in California (“California Governmental Entities”). One of \_\_\_\_\_’s products is an \_\_\_\_\_ which facilitates the transfer of a detainee’s cash from a detention facility to that detention facility’s bank account (“\_\_\_\_\_ Transaction”).

The following is a description of an \_\_\_\_\_ Transaction: After being arrested, a detainee goes through a booking process at a correctional facility. During the booking process, a detainee must surrender all personal belongings, including any cash, to the police officer conducting the booking (“Intake Officer”). The Intake Officer catalogs the detainee’s property which will be returned to the detainee when he or she is released. This process is not optional for the detainee.

During a traditional booking process, the Intake Officer catalogs and places the detainee's property in a physical box or bin for safekeeping until the detainee is released. When California Governmental Entities use \_\_\_\_\_, the Intake Officer creates a sub-account for the detainee in the correctional facility's accounting system. Then, the Intake Officer takes possession of the cash, inserts it into an \_\_\_\_\_, and assigns the funds to the detainee's sub-account. Simultaneously, the \_\_\_\_\_ transmits a record of the transaction to \_\_\_\_\_, which notifies the correctional facility's accounting database of the transaction. Later, the funds are retrieved from the \_\_\_\_\_ and delivered to \_\_\_\_\_'s bank account. \_\_\_\_\_ then transfers the money to the correctional facility's bank account. The correctional facility is responsible for maintaining its account, including a detainee's sub-account. When the detainee is released, the correctional facility returns any cash and other property initially surrendered back to the detainee.

### **MONEY TRANSMISSION ACT**

The MTA prohibits a person from engaging in the business of money transmission in California, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.<sup>1</sup> Financial Code section 2003, subdivision (q)(3) defines "money transmission" to include receiving money for transmission. Financial Code section 2003, subdivision (u) defines "receiving money for transmission" to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

\_\_\_\_\_ receives money in \_\_\_\_\_ located in California and transfers the money to bank accounts of California Governmental Entities. This constitutes receiving money for transmission pursuant to Financial Code section 2003, subdivision (u).

#### **A. Exempt as an Agent of Exempt Governmental Entities**

Financial Code section 2010, subdivision (c) exempts a state, county, city, or any other governmental agency or governmental subdivision of a state from the MTA. To provide \_\_\_\_\_, \_\_\_\_\_ contracts with the State of California through the California Department of Corrections and Rehabilitation or California counties via county correctional facilities or county sheriff's offices. These governmental entities are exempt from licensure under the MTA.

You argue that \_\_\_\_\_ is exempt from the MTA as an agent of an exempt entity, namely the California Governmental Entities that \_\_\_\_\_ contracts with. You provided an example of an agreement between \_\_\_\_\_y and a California Governmental Entity and highlighted the following language:

---

<sup>1</sup> Fin. Code, § 2030, subd. (a).

"A. The [California Governmental Entity] wishes to obtain services of [ ] to provide an inmate money handling kiosk service at one or more correctional facilities; and

B. [ ] represents that it is a duly qualified service provider and licensed money services business, experienced in the installation and operation of equipment and software programs for payment and deposit systems and other related services which will benefit users by providing certain deposit and transfer options through the facilitation of electronic deposits into government accounts via the internet, telephone, free-standing payment kiosks and retail locations; and

C. [California Governmental Entity] wishes to implement and make available the proposed services for its own benefit and that of its Senders."

However, this language does not establish an agency relationship.

Furthermore, the contract states that "This Agreement is entered into by both parties with the express understanding that [ ] will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute [ ] or any of its agents, employees or officers as an agent, employee or officer of [California Governmental Entity]." This clause specifically states that \_\_\_\_\_ is not an agent of the California Governmental Entity. Therefore, the requirements of Section 2030, subdivision (a) are not satisfied.

## **B. Exemption for Operators of Payment Systems**

Financial Code section 2010, subdivision (h) exempts from the MTA an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by Section 2010, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers, to the extent of its operation as such a provider. Financial Code section 2010, subdivision (c) exempts a state, county, city, or any other governmental agency or governmental subdivision of a state from the MTA.

You assert that \_\_\_\_\_ operates a payment system between a California Governmental Entity and itself because the Intake Officer, as an employee of the California Governmental Entity, initiates the \_\_\_\_\_ Transaction by inserting the detainee's cash into the \_\_\_\_\_. Once the funds are deposited into \_\_\_\_\_'s bank account, \_\_\_\_\_ transfers the funds to the correctional facility's bank account. You argue that the detainee is not a customer of \_\_\_\_\_ for purposes of an \_\_\_\_\_ Transaction because the detainee has no choice regarding how the Intake Officer processes his or her cash and the detainee does not have access to the \_\_\_\_\_.

You cite the following information from the Fresno County Sheriff's Office website:

*The arresting/transporting officers are required to inventory the arrestee's personal property and seal it into a bag. In most cases, this makes it unnecessary for Jail personnel to handle the inmate's property. The transporting officer will deposit the inmate's cash into an automated electronic \_\_\_\_\_ kiosk located in the intake area. (emphasis added).*

You also cite this excerpt from the Manual of Policies and Procedures from the San Diego County Sheriff's Department Detention Services Bureau:

*It will be the responsibility of the arresting/transporting officer to accurately inventory the arrestee's money. The officer will count and verify the money amount in the presence of the arrestee. The officer will deposit cash into the intake cash kiosk machine. All coin currency will be placed in the arrestee's plastic property bag and will not be placed on an inmate's funds account. The machine will generate a receipt, which will be placed in the inmate's sealed property bag. Cash deposited into the kiosk machine will be immediately reflected on the inmate's funds account. (emphasis added).*

Therefore, you argue that \_\_\_\_\_ is not receiving funds from or transferring funds to any person other than the same exempt California Governmental Entity for its own governmental purpose.

The Department agrees the detainee is not a customer of \_\_\_\_\_ when it processes an \_\_\_\_\_ Transaction, regardless of who holds legal title to the money. Intake Officers are required to inventory a detainee's personal property including any cash. A detainee does not have the option to keep personal property or transfer it to someone other than the Intake Officer. \_\_\_\_\_ Transactions are initiated by the Intake Officer for the purpose of sending funds to the correctional facility's bank account which has sub-accounts for each detainee. Thus, \_\_\_\_\_ is providing payment processing services between a California Governmental Entity and itself for purposes of \_\_\_\_\_ Transactions. Since California Governmental Entities are exempt from the MTA under Financial Code section 2010, subdivision (c), \_\_\_\_\_ is operating a payment processing system between or among persons exempt from the MTA when it processes \_\_\_\_\_ Transactions. Therefore, the requirements of Financial Code section 2010, subdivision (h) are met and \_\_\_\_\_ Transactions are exempt from the MTA.<sup>2</sup>

---

<sup>2</sup> It may be noted that this application of the exemption in Financial Code section 2010, subdivision (h) is somewhat unique because \_\_\_\_\_ is processing payments between a California Governmental Entity and itself and Financial Code section 2010, subdivision (h) states "between or among persons" which may imply payment processing between or among different persons. However, if the legislature intended to exempt a payment processor operating between two different exempt governmental entities because such entities and their payment

This letter is limited to the facts and circumstances presented to the Department in the correspondence listed above. Should any of the facts or circumstances change, the Department's position may also change.

If you have any questions, please contact the undersigned at (\_\_\_\_) \_\_\_\_.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By

---

Pamela F. Hernandez  
Counsel

PFH:ss

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division

---

processors do not require regulation, then the same reasoning would apply to a payment processor operating between a governmental entity and itself.