

Solicitor's Corner

Using Postcards to Notify Customers of Utility Service Bills?

Believe it or Not, It Could Be Illegal

By Benjamin R. Picker, Esq.

Many municipal authorities currently use postcards to notify customers of the amount due for water or sewer service provided by the authority. This, in itself, is not a problem. But, what if the payment is overdue? Just add the overdue amount to the appropriate section of another post card and send it out . . . right? Wrong. While this may seem like a harmless practice, it may come as a surprise that the practice of using postcards to notify customers of their delinquency is, in fact, illegal, since it violates the Pennsylvania Fair Credit Extension Uniformity Act (FCA), 73 P.S. §2270.1 *et seq.* Under the FCA, communicating with a consumer regarding a "debt" by postcard is a *per se* unconscionable means to collect or attempt to collect a "debt."

What is a "Debt" Under the FCA?

A "debt" is defined in the FCA as an actual or alleged past due obligation, claim, demand, note or other similar liability of a consumer to pay money, arising out of a single account as a result of a purchase, lease or loan of goods, services or real or personal property for personal, family or household purposes or as a result of a loan of money or extension of credit which is obtained primarily for personal, family or household purposes . . .

In short, a debt is defined as any "past due obligation." As a result, if a creditor

gives a consumer a particular time period, such as thirty days, in which to pay a bill, the initial bill to the customer is not subject to the FCA since it is not yet "past due." However, if a customer fails to pay the bill within the required thirty days, further communications with the customer are in fact subject to the FCA and may not be made by postcard.

Are Municipal Authorities Subject to the FCA?

Although the Commonwealth of Pennsylvania and the United States are not considered "creditors" under the FCA and therefore need not abide by the provisions of the FCA, political subdivisions within the Commonwealth are specifically included within the definition of creditor. Although some courts have held that municipal authorities are agencies of the Commonwealth, several cases provide that municipal authorities are instead part of the political subdivision in which they are located: See *Borough of Hummelstown v. Lower Dauphin School Dist.*, 357 A.2d 727 (Pa. Commw. 1976); *Petition of Lehigh-Northampton Airport Auth.*, 16 Pa. D. & C.2d 300, 303 (Pa. Com. Pl. 1959). Further, since municipal authorities do exercise independent corporate power, a good argument can be made that they are subject to the FCA. Since the issue of whether a municipal authority is subject to the restrictions and requirements of the

FCA has not been finally determined by the courts, it would be wise for an authority to abide by the provisions of the FCA.

What is At Risk?

Although the FCA does not provide its own penalty, a violation of the FCA is deemed to be a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 *et seq.* Under the Unfair Trade Practices and Consumer Protection Law, a consumer may bring a private right of action and may recover his or her actual damages or \$100.00, whichever is greater. The greatest danger is that a customer could potentially bring a class action lawsuit on behalf of all other customers, resulting in thousands of dollars in damages. The court also has the discretion to award court costs and reasonable attorney's fees, and may also reward treble damages in proper cases.

In order for consumers to bring private rights of action, they must provide that they have suffered some "ascertainable loss of money or property, real or personal." This is a difficult burden for consumers to meet where they allege merely that they received a post card bill. Nonetheless, the Attorney General and district attorneys also have the authority to bring suit for violations, without proof that the consumer has suffered ascertainable loss. Regardless of whether

a customer will be able to recover damages, it is a sure bet that the last thing a municipal authority wants is to be featured on the local nightly news for violating a consumer protection statute.

In conclusion, municipal authorities should not use postcards to communicate with customers about past due amounts. Any such communications should be made by sealed letter and should not have any language or symbol on the envelope indicating that the communication relates to the collection of a debt. Further, in the communication with the consumer the municipal authority may not threaten to take any action, such as filing suit or a lien, when the authority has no present intention to do so. Since the FCA specifically bars many other types of acts by creditors, it would be wise to communicate with legal counsel before taking any action that could potentially be considered false, deceptive, misleading or otherwise unconscionable. *