



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

December 17, 1976

FILE NO. S-1193

**FINANCIAL INSTITUTIONS:
Whether Director of Department
of Financial Institutions May
Set Rates and Fees Charged by
Community Currency Exchanges.**

A.T. Tsoumas, Director
Department of Financial Institutions
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Tsoumas:

I have your letter wherein you ask whether you have the authority, as the Director of the Department of Financial Institutions, to set rates and fees which may be charged by community currency exchanges. It is my opinion that you do not have such authority.

An administrative agency has the authority and responsibility to administer a statute (Hill v. Relyea, 34

A.T. Tsoumas - 2.

Ill. 2d 552), but the statute which is being administered may not be altered or added to by the exercise of a power to make regulations. (Ruby Chevrolet v. Dept. of Revenue, 6 Ill. 2d 147.) Section 19 of "AN ACT in relation to the definition, licensing and registration of community currency exchanges, etc." [Community Currency Exchanges Act] (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 49) authorizes the Director of the Department of Financial Institutions to:

"* * * make and enforce such reasonable, relevant regulations, directions, orders, decisions and findings as may be necessary for the execution and enforcement of this Act and the purposes sought to be attained herein. * * *"

Section .01 of the Act (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 30) states that currency exchanges:

"* * * should be licensed and regulated as a business affecting the convenience, general welfare and economic interest of the people of this State.

* * *

Other sections of the Community Currency Exchanges Act detail a plan for regulating community currency exchanges. In exercising his authority to make regulations the Director

A.T. Tsoumas - 3.

must act within this legislative plan. Regulations made by the Director which deviate from the legislative plan set out in the Community Currency Exchanges Act are invalid since they add to the provisions of the Act.

The Community Currency Exchanges Act prohibits currency exchanges from offering certain services (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 33). The Act provides how much insurance community currency exchanges must obtain and requires exchanges to keep a minimum amount of money on hand. (Ill. Rev. Stat. 1975, ch. 16 1/2, pars. 36 and 37.) Licensed currency exchanges are also required to submit annual reports to the Director of the Department of Financial Institutions. (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 46.) These provisions are only a sampling of the specific requirements that are imposed on licensed currency exchanges by the Community Currency Exchanges Act. Together these requirements form the legislative plan for regulating currency exchanges.

There is no provision whatever in the Act regarding the rates and fees charged by community currency exchanges.

A.T. Tsoumas - 4.

The complete absence from the legislative plan of any provision concerning this obvious means of regulating currency exchanges demonstrates that the legislature did not authorize, and did not intend to authorize, the Director to set rates and fees which may be charged by community currency exchanges. If the Director attempted to set rates and fees, he would be exercising a power not conferred on him and would be acting beyond his authority since he would be adding to the Act which he has a duty to administer.

Furthermore, the legislature, in delegating to an administrative agency the performance of certain functions, may not invest the agency with arbitrary powers (McDougall v. Lueder, 389 Ill. 141) and must provide the administrative agency with sufficient standards to govern the exercise of the agency's power. (People v. Tibbitts, 56 Ill. 2d 56.) The absence of standards for setting rates and fees confirms the conclusion that the Director does not have the authority to set rates and fees that may be charged by community currency exchanges.

Very truly yours,

A T T O R N E Y G E N E R A L