



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 7, 1986

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 86-115

The Honorable Ken Francisco
State Representative, Ninetieth District
P.O. Box 11163
Wichita, Kansas 67202

Re: Consumer Credit Code--Regulation of Agreements and
Practices; Disclosure--Discounts For Cash Purchases

Synopsis: Discounts for cash purchases offered by oil
companies are not proscribed by L. 1986, ch. 90,
§2 when such discounts are offered to all
prospective buyers, the availability of the
discount is clearly and conspicuously disclosed and
the discount is subtracted from the regular price.
Cited herein: 15 U.S.C. §1666f(b) (1982); K.S.A.
16a-1-101(2); 16a-1-102; K.S.A. 1985 Supp.
16a-2-401, as amended by L. 1986, ch. 90, §2.

* * *

Dear Representative Francisco:

You request our opinion concerning the interpretation of 1986
House Bill, 3018, L. 1986, ch. 90, §2, which is an amendment
to the Kansas Uniform Consumer Credit Code, K.S.A. 16a-1-101
et seq. Specifically, you inquire whether a discount
offered by oil companies for cash purchases constitutes a
proscribed surcharge under the act.

L. 1986, ch. 90, §2 defines a surcharge as any additional
amount imposed by the merchant at the time of the sale which
increases the charge to the buyer when that additional amount
is included for the privilege of using a credit card. Such a

surcharge may not be imposed on a holder of a credit card who elects to use the credit card in lieu of payment by cash, check, or similar means. Based on this definition and the following policy arguments, it is our opinion that a discount for cash payment is not a surcharge as that term is used in Section 2.

The purpose of the Kansas Uniform Consumer Credit Code (U3C), is expressly stated in K.S.A. 16a-1-102. Among other things, the U3C is meant to protect consumer borrowers against unfair practices while having due regard for the interests of scrupulous creditors. It also serves to further consumers' understanding of terms involved in credit transactions. K.S.A. 16a-1-102(2)(c) and (d). These purposes would not be furthered by a construction of the statute in question which would prohibit bona fide cash discounts when such discounts are conspicuously disclosed and not meant as a discouragement to other-than-for-cash payments. Such a construction would serve as a penalty to those who choose to pay cash, rather than as a protection for those who pay by credit card.

In support of our position, we note that federal consumer protection laws specifically allow this type of cash discount, providing that it is not a prohibited surcharge. 15 U.S.C. §1666f(b) states as follows:

"With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge . . . if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously." (Emphasis added.)

Further, 15 U.S.C. §1666j(c) provides:

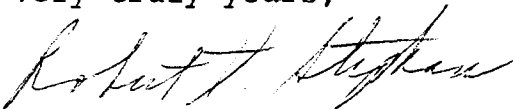
". . . any discount offered under section 167(b) of this title [15 U.S.C.S. §1666f(b)] shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection

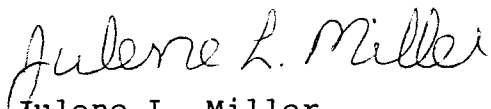
with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit."

Conversely, a seller who posts a specific price on the pump and then adds an additional amount to that price for credit card purchases would be in violation of L. 1986, ch. 90, §2 as well as 15 U.S.C. §1666f(b). In that situation, the credit card user is hit with a "surprise" charge at the time of payment. This is not the case when the credit card user pays the posted price and the discount to those who pay cash is subtracted from that price.

In conclusion, we are of the opinion that oil companies may offer bona fide cash discounts when such discounts are clearly disclosed, offered to all prospective buyers, and are subtracted from the regular price.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm