

January 31, 2005

Re:

Opinion Request

Dear M

By way of letter dated May 29, 2003, you have submitted a request for an interpretive opinion under the Idaho Money Transmitters Act. More specifically, you have asked "whether a license is required by a bank that issues stored value cards sold through a non-bank entity that is a licensee" pursuant to the Idaho Money Transmitters Act (Chapter 29, Title 26, Idaho Code).

As noted in your letter, Idaho Code §26-2904(1) provides that:

"This chapter shall not apply to...Banks, credit unions, savings and loan associations or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks..."

As you know, Idaho Code §26-2902(11) defines money transmission as the "sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States by any and all means...". In the context of your letter, it does appear that the bank will be acting as an "issuer" of a money transmission instrument through a non-bank entity that is currently licensed under Idaho Code §26-2902(9).

As written, the Idaho Money Transmitters Act does require that a bank become licensed under the Act if the bank's intent is to then offer or issue payment instruments in Idaho through authorized delegates who are not themselves exempt under the Act.

In the present situation, you have noted that _____ is licensed in Idaho pursuant to the Idaho Money Transmitters Act. Moreover, you have also represented that the banks participating in _____ program will be subject to extensive regulation by state and federal regulators. Finally, you have noted that banks participating in _____ program will have a limited role in the " _____ " program as the issuer of the card.

Based solely upon the factual information presented in your letter, this Department will take a no action position regarding the licensing requirements of the Act for banks organized under the laws of any state or the United States as it relates to their participation in the _____ program as described in your letter of May 29, 2003. The preceding no-action position is also based on a presumption that _____ remains licensed with this Department during the life of the program's use in Idaho.

Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

JAMES A. BURNS
Idaho Dept. of Finance