



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 29, 1996

The Honorable Kenny Marchant  
Chair  
Committee on Financial Institutions  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 96-025

Re: Whether V.T.C.S. article 5069-1.12 prohibits the imposition of a surcharge on the use of a credit card to pay membership dues or to make contributions to a place of worship where no sale of goods or services is involved (ID# 36828)

Dear Representative Marchant:

You ask whether V.T.C.S. article 5069-1.12 prohibits the imposition of a surcharge on the use of a credit card to pay membership dues or to make contributions to a place of worship where no sale of goods or services is involved. Article 5069-1.12 provides in pertinent part as follows:

(a) In a sales transaction for goods or services involving the use of a credit card for an extension of credit, the seller may not impose a surcharge on the buyer because the buyer uses a credit card instead of cash, a check, or similar means of payment. [Emphasis added.]

Your question assumes that the payment of membership dues or contributions to a place of worship standing alone does not involve the sale of goods or services. Provided that your assumption is correct, article 5069-1.12 does not prohibit the imposition of a surcharge on the use of a credit card to pay membership dues or to make contributions to a place of worship.<sup>1</sup> Article 5069-1.12 would prohibit the imposition of a surcharge on such transactions, however, where the sale of goods or services is actually involved. For the following reasons, we are unable to determine whether your assumption is correct.

The phrase "goods or services" in article 5069-1.12 is not defined. Therefore, we give the words "goods" and "services" their ordinary meaning. See Gov't Code § 312.002(a). "Goods" are defined as "personal property having intrinsic value." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 527 (1990). "Services" are defined as "useful labor that does not produce a tangible commodity." *Id.* at 1076. These definitions

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<sup>1</sup>We note that federal law also prohibits the imposition of surcharges on certain credit card transactions. See 15 U.S.C. § 1666f. We do not comment on the scope of that federal provision.

are narrower but consistent with definitions of the terms in other statutes. The Deceptive Trade Practices Act, for example, defines them somewhat more broadly as follows:

(1) "Goods" means tangible chattels or real property purchased or leased for use.

(2) "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

Bus. & Com. Code § 17.45 (definitions for purposes of Bus. & Com. Code ch. 17, subch. E).

Regardless of how the terms are defined, the determination whether the payment of membership dues or contributions to a place of worship involves the receipt of "goods or services" would require an examination of whether any good or service is received in exchange for the payment. Because the determination involves factual issues, it is beyond the purview of the opinion process.

#### S U M M A R Y

Article 5069-1.12, V.T.C.S., does not prohibit the imposition of a surcharge on the use of a credit card to pay membership dues or to make contributions to a place of worship where no sale of goods or services is involved.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee