

**OPINION NO. 87-086****Syllabus:**

A telegraph company that performs money transfer services, whereby it receives money from one person and, upon payment of a fee therefor, subsequently utilizes telecommunication or data processing facilities to transfer that money to another person, is subject to the licensing requirements of R.C. Chapter 1310.

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To: Kenneth R. Cox, Director, Department of Commerce, Columbus, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, November 2, 1987

You have requested my opinion regarding the application of R.C. Chapter 1310 (transmitters of money) to an entity that provides money transfer services to the general public. Specifically, you wish to know whether the Western Union Telegraph Company is engaged in the business of selling or issuing "Ohio instruments," as defined in R.C. 1310.01, or other activity within the scope of R.C. Chapter 1310, when it performs money transfer services for its customers, such that it must comply with the bonding and licensing requirements set forth therein. Assuming an affirmative answer to the foregoing question, you further wish to know whether the application of R.C. Chapter 1310 to Western Union in this instance may be prohibited as a result of either regulatory actions that may have already been taken by the Public Utilities Commission of Ohio in this matter or currently prevailing principles of preemption under federal law.

R.C. Chapter 1310 imposes specific bonding and licensing requirements, which are administered and enforced by the Department of Commerce, upon any person who engages in the business of selling or issuing Ohio instruments, receiving money for transmission, or transmitting money. R.C. 1310.01; R.C. 1310.02. R.C. 1310.02(A) states as follows:

No person shall engage in the business of selling or issuing Ohio instruments, or engage in the business of receiving money for transmission or transmitting the same, without a license therefor obtained from the director of commerce as provided in this chapter, nor shall any person engage in such business as an agent, except as an agent of a licensee. (Emphasis added.)

R.C. 1310.02 further describes the information that shall be submitted to the Director of the Department of Commerce by a person applying for licensure as a transmitter of money or an agent thereof, R.C. 1310.02(C), and also provides that such application shall be accompanied by an initial nonrefundable investigation fee not to exceed twenty-five hundred dollars, and an annual license fee not to exceed one thousand dollars, R.C. 1310.02(D). See also R.C. 1310.02(B) (R.C. Chapter 1310 does not apply to "banks, building and loan associations, the United States postal service, or other persons to the extent exercising a right to receive money for the purpose of transmitting it to foreign countries pursuant to [R.C. 1107.03]"<sup>1</sup> (footnote added)).

R.C. 1310.03 describes the process that occurs following the submission of an application for an original license or a renewal thereof under R.C. 1310.02, and specifically orders the Director to "investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant," R.C. 1310.03(A). If the Director finds that the applicant has, in fact, satisfied the conditions set forth therein, see R.C. 1310.03(A)(1)-(5), and

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<sup>1</sup> R.C. 1107.03 describes separate requirements imposed upon banks and certain other entities that are engaged in the business of transmitting money or its equivalent to foreign countries.

filed with the Director the corporate surety bond required by R.C. 1310.04,<sup>2</sup> he "shall issue to the applicant a license to engage in the business of selling and issuing Ohio instruments designated as checks, or Ohio instruments designated as travelers checks, or both," or the Director "may deny the application and return the license fee to the applicant." The remaining divisions of R.C. 1310.03 specify the time within which the approval or denial of a license shall take place, R.C. 1310.03(B), and the time for which a license shall be in force and effect, R.C. 1310.03(C); describe the procedures that govern the renewal of a license, R.C. 1310.03(D); and authorize the Director to suspend or revoke, after a hearing thereon, an original or renewal license, R.C. 1310.03(E); R.C. 1310.03(F). See also R.C. 1310.06 (investigations and hearings by Director pertaining to suspected violations of R.C. Chapter 1310; confidentiality thereof); R.C. 1310.07 (judicial review of Director's decision to refuse issuance of a license, or suspend or revoke a license); R.C. 1310.08 (licensee may conduct business through its designated agents and subagents; duties of agents, and liability of licensee for loss caused by its agents or subagents); R.C. 1310.09 (the Director of the Department of Commerce may promulgate rules as in his judgment are necessary or appropriate for the enforcement of R.C. Chapter 1310).<sup>3</sup> R.C. 1310.11 enumerates several specific prohibitions with respect to matters addressed in R.C. Chapter 1310, and R.C. 1310.99 further states that whoever violates R.C. 1310.11 "is guilty of a misdemeanor of the first degree."

Finally, R.C. 1310.01 defines a number of terms as they are used in R.C. Chapter 1310. As pertains to the situation described in your letter, R.C. 1310.01 defines the terms "[c]heck," "Ohio instrument," and "[t]ravelers check," as follows:

(A) "Check" means any check, draft, money order, or other instrument for the transmission or payment of

<sup>2</sup> R.C. 1310.04(A) states as follows:

As a condition for the issuance and retention of the license, applicants for a license and other licensees shall, within thirty days after notice by the director of commerce, or such longer or shorter period as he shall prescribe, file with the director a corporate surety bond in form satisfactory to him and issued by a bonding company or insurance company authorized to do business in this state. The bond shall be in favor of the director and in the principal sum of one hundred thousand dollars and an additional principal sum of five thousand dollars for each location, in excess of one, at which the applicant proposes to sell Ohio instruments, whether directly or through agents or subagents, but in no case shall the bond exceed three hundred thousand dollars. The proceeds of the bond shall constitute a trust fund for the exclusive benefit of the purchasers and holders of the Ohio instruments. (Emphasis added.)

<sup>3</sup> Such rules have not, in fact, been promulgated.

money. "Check" does not include a travelers check.

....  
(D) "Ohio instrument" means a check or travelers check that is sold in this state, and that evidences either an obligation for the transmission or payment of money, or the purchase, or the deposit of funds for the purchase, of such check or travelers check.

....  
(G) "Travelers check" means an instrument in a whole multiple of ten dollars if under one hundred dollars or in a whole multiple of one hundred dollars, for the payment of money that contains a provision for a specimen signature of the purchaser to be completed at the time of purchase of the instrument and a provision for a countersignature of the purchaser to be completed at the time of negotiation. (Emphasis added.)

I now direct my attention to your first question. You wish to know whether the Western Union Telegraph Company is engaged in the business of selling or issuing "Ohio instruments," as defined in R.C. 1301.01, or other activity within the scope of R.C. Chapter 1310, when it performs money transfer services for its customers. A memorandum prepared by counsel for Western Union accompanies your letter and describes, as follows, the manner in which Western Union's money transfer service functions:

Western Union's services are engaged when a customer requests a "transfer" of money by paying the principal and fees and providing information to identify the authorized recipient. (See Western Union's Form 72, enclosed.) The customer receives a carbon of Form 72 as a receipt. This form allows the customer to receive a refund if delivery has not been made, for whatever reason, within thirty days, or to receive a return of principal before Western Union pays the authorized recipient. A Western Union customer does not, however, receive a check, draft, money order, travelers check or negotiable instrument which may serve as a vehicle for the transmission or payment of money, or which the customer may use as a substitute for money.

Information received from the customer is then transmitted via Western Union's nationwide computer switching system to a master computer where the information is stored along with additional transaction identification information until recalled. Information so stored is retrieved by an authorized agent after a person has requested the money in writing. (See Form 5391 enclosed.) The authorized payout agent then accesses the information stored in the master computer using information provided by the designated recipient. If the information provided corresponds to the information stored, the payout agent is authorized to pay the requesting person.

At payout, a Western Union check, called a "Western Union Money Transfer," is completed by an authorized Western Union agent. A sample is attached. The authorized recipient then receives Western Union's check for immediate payment by the Western Union agent or a nearby bank.

The recipient's endorsement provides the record of receipt and proof of fulfillment of Western Union's contractual obligation to the customer. The Western Union Money Transfer check provides a simple and effective device for tracking transactions for accounting purposes.

In service initiated with a Western Union agent, funds received from a customer are deposited before the close of the banking day to a local account which is in due course drawn down by Western Union. Western Union agents also deposit endorsed Western Union Money Transfers in local accounts to which Western Union has access. Agents receive monthly commissions for services performed by them. (Footnotes omitted.)

I conclude that the money transfer service of the Western Union Telegraph Company described above is an activity within the scope of R.C. Chapter 1310, such that Western Union must comply with the licensing and bonding requirements set forth in R.C. 1310.02-.04. R.C. 1310.02(A) states, in part, that no person shall "engage in the business of receiving money for transmission or transmitting the same, without a license therefor obtained from the director of commerce as provided in [R.C. Chapter 1310]." (Emphasis added.) The term "transmit," is not defined for purposes of R.C. Chapter 1310. Thus, in accordance with the rule of statutory construction appearing in R.C. 1.42, such term "shall be read in context and construed according to the rules of grammar and common usage." See State v. Dorso, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) ("any term left undefined by statute is to be accorded its common, everyday meaning"); Eastman v. State, 131 Ohio St. 1, 1 N.E.2d 140 (1936)(syllabus, paragraph five)(same). Webster's New World Dictionary 1511 (2d college ed. 1978) states, in pertinent part, that "transmit" means "to send or cause to go from one person or place to another, especially across intervening space or distance; transfer; dispatch; convey." See also Black's Law Dictionary 1344 (5th ed. 1979) ("transmit" means "[t]o send or transfer from one person or place to another, or to communicate"). Accordingly, under R.C. 1310.02(A), any person who engages in the business of receiving money for the purpose of sending or transferring it to another person or place must be licensed therefor by the Director of the Department of Commerce.

The Western Union Telegraph Company is engaged in the business of receiving money for transmission, and transmitting money, when it performs for its customers the money transfer services described previously. In this regard, Western Union states that its money transfer services "are engaged when a customer requests a 'transfer' of money by paying the principal and fees and providing information to identify the authorized recipient" and thereafter describes in detail the process by which Western Union actually effects the transfer of the principal it has received from the customer to the person designated by the customer. The process culminates in the issuance of a Western Union check to the designated recipient "for immediate payment by the Western Union agent or a nearby bank." It is clear, therefore, that Western Union's money transfer service has as its purpose the transmission of money from one person and place to another person and place. Thus, by offering and performing such service, Western Union is "engage[d] in the business of receiving money for transmission

or transmitting the same," and must be licensed therefor by the Director of the Department of Commerce, R.C. 1310.02(A).<sup>4</sup>

In your second question you ask whether application of R.C. Chapter 1310 by the Department of Commerce to Western Union may be prohibited as a result of either prior regulatory action on the part of the Public Utilities Commission of Ohio in this area, or currently prevailing principles of preemption under federal law. I shall consider first the question of preemption within the context of federal law.

The United States Constitution, art. VI, cl.2, provides in part that, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." Thus, it has been a longstanding principle of law that when state and federal law, and administrative rules and regulations promulgated pursuant thereto, address similar areas of concern, and are found to conflict in their particular pronouncements, the state law provisions are superseded by the federal enactments. See, e.g., Jones v. Rath Packing Co., 430 U.S. 519 (1977) (a state may not enact food labelling requirements that do not permit reasonable weight variations when federal law allows reasonable variations in accuracy resulting from moisture loss during distribution because the state law conflicts with the goal of the federal law to facilitate value comparisons); City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) (local government may not regulate aviation in a manner contrary to the national scheme of regulation simply in order to comport with local preferences); Campbell v. Hussey, 368 U.S. 297 (1961) (Georgia law that had superseded federal requirements pertaining to the labelling of tobacco products invalidated); 1973 Op. Att'y Gen. No. 73-117 at 2-447 ("[f]ormer Attorneys General have advised that certain [state] statutes conflicted with federal enactments, and therefore were superseded to the extent they were inconsistent"). Whether the enforcement of a state or local law is precluded by a federal enactment on the same subject turns on "[t]he nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by the law," and whether, under the circumstances of the particular case, the

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<sup>4</sup> Thus, I find it unnecessary, for the purpose of this opinion, to make a conclusive determination whether the Western Union Telegraph Company is also engaged in the business of "selling or issuing Ohio instruments," R.C. 1310.02(A), when it performs its various money transfer activities. I note, however, that R.C. 1310.01(D) defines an "Ohio instrument," as used in R.C. Chapter 1310, as a "check or travelers check that is sold in this state, and that evidences either an obligation for the transmission or payment of money, or the purchase, or the deposit of funds for the purchase, of such check or travelers check." R.C. 1310.01(A) in turn defines "[c]heck," as any "check, draft, money order, or other instrument for the transmission or payment of money." A Western Union check that is issued to the person designated to receive money that is transferred by Western Union appears to come within the purview of the foregoing definitions insofar as such check is an instrument for the payment of money that evidences an obligation therefor.

state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67, 70 (1941). State law is preempted by federal law whenever the two schemes inevitably conflict so as to make compliance with both federal and state regulations a physical impossibility or whenever Congress has manifested an intent, express or implied, to displace state regulation in a specific area. Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963); Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971), affirmed, 405 U.S. 1035 (1972). See also Hayfield Northern Railroad Company, Inc. v. Chicago and North Western Transportation Company, 467 U.S. 622 (1984); Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691 (1984).

Insofar as the supersession of state laws is concerned, the foregoing principles apply in those instances in which Congress, pursuant to the authority conferred upon it by U.S. Const. art. I, §8, cl. 3 ("[t]he Congress shall have Power...[t]o regulate Commerce with foreign Nations, and among the several States"), has acted to regulate certain interstate activities of telephone and telegraph companies. See, e.g., Louisiana Public Service Commission v. Federal Communications Commission, 476 U.S. \_\_\_\_\_, 106 S. Ct. 1890 (1986); Northwestern Bell Telephone Company v. Nebraska State Railway Commission, 297 U.S. 471 (1936). Pursuant to the Federal Communications Act of 1934, 47 U.S.C. §§151-611 (1981 and Supp. 1987), Congress has conferred responsibility upon the Federal Communications Commission (FCC) for overseeing certain interstate activities of such entities. See 47 U.S.C. §§151-153; Weiss v. United States, 308 U.S. 321 (1939); American Telephone and Telegraph Company v. United States, 299 U.S. 232 (1936).

You indicate that your question about federal preemption has been prompted by specific concerns raised in this regard by Western Union. It has been suggested that the decision in Computer and Communications Industry Association v. Federal Communications Commission, 693 F.2d 198 (D.C. Cir. 1982) (hereinafter CCIA v. FCC), cert. denied sub nom. Louisiana Public Service Commission v. Federal Communications Commission, 461 U.S. 938 (1983), in which the court of appeals reviewed, and subsequently affirmed, a series of rulemaking proceedings by the FCC,<sup>5</sup> has effectively preempted the application of R.C. Chapter 1310 to Western Union's money transfer service. Having reviewed that decision in light of the preemption principles I have just summarized, I find that I am unable to concur in such an assertion. Rather, I find that the holding of the court in CCIA v. FCC does not, in any respect, prevent the application of R.C. Chapter 1310 to Western Union's money transfer service. In order to facilitate a clear understanding of the reasons for this conclusion, however, I find it

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<sup>5</sup> See Final Decision, In re Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C. 2d 384 (1980); Memorandum Opinion and Order, In re Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 84 F.C.C. 2d 50 (1980); Memorandum Opinion and Order on Further Reconsideration, In re Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 88 F.C.C. 2d 512 (1981).

necessary to elucidate at some length the specific facts and legal issues that confronted the court in CCIA v. FCC.

In CCIA v. FCC the court of appeals was called upon to review the propriety of a series of decisions by the FCC in which the agency, pursuant to its rulemaking authority, determined that the furnishing of customer premises equipment (CPE) and enhanced services by certain telecommunication companies would no longer be subject to the FCC's regulatory jurisdiction.<sup>6</sup> As a result of burgeoning technological changes in the field of telecommunications, the FCC decided to give serious consideration to deregulating the furnishing of customer premises equipment and enhanced services. In particular, the FCC had found it increasingly difficult to formulate and implement a coherent and uniform regulatory policy with respect to such "hybrid" services because of the extent to which those services combine both communications functions, which historically have been subject to FCC regulation, and data processing functions, which, as a general matter, have not been subject to FCC regulation. CCIA v. FCC, 693 F.2d at 203. After studying the matter for approximately five years, the FCC proceedings, commonly known as the First Computer Inquiry or Computer I, "culminated in 1971 with the adoption of rules delineating the circumstances in which computer use by common carriers constituted common carrier communication subject to regulation under Title II of the [Federal Communications] Act and when such use constituted unregulated data processing," whereby the Commission "looked at the manner in which computerization was employed to determine how a service would be regulated." In this regard, the FCC "distinguished between communications services using computers to perform message or circuit switching, which were regulated, and data processing services, which were left to marketplace competition." Further, the "regulatory status of 'hybrid' services, which combined both communications and data processing functions, was to be determined on a case-by-case basis depending upon which function was predominant." Id. (Footnotes omitted.) See also Final Decision and Order, In re Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities (First Computer Inquiry), 28 F.C.C. 2d 267 (1971), affirmed in part

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<sup>6</sup> In the telecommunications industry, "customer premises equipment" is commonly understood as referring to equipment such as basic telephones, answering machines, key systems, and private branch exchange (PBX) switchboards. Computer and Communications Industry Association v. Federal Communications Commission, 693 F.2d 198, 204 n.14 (D.C. Cir. 1982)(hereinafter CCIA v. FCC). "Enhanced service" is defined in the Code of Federal Regulations as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. §64.702(a)(1986). See also CCIA v. FCC, 693 F.2d at 205 n.18 ("[a]n example of enhanced service is AT & T's Dial It service, whereby subscribers dial a certain number to gain access to stored information such as the scores of professional sports contests").



and reversed in part sub nom. GTE Service Corporation v. Federal Communications Commission, 474 F.2d 724 (2d Cir. 1973), decision on remand, 40 F.C.C. 2d 293 (1973).

Because of continuing technological advances, however, "the line between regulated and unregulated activities became increasingly blurred," CCIA v. FCC, 693 F.2d at 204, and, as a result, the FCC soon found that its new rules were not readily adaptable to those advances. Thus, in 1976 the FCC "instituted the Second Computer Inquiry to reexamine its definitional structure and to find a more workable regulatory approach." Id. (Footnote omitted.) Consequently, the FCC's second investigation of this matter resulted in a number of significant regulatory changes, including removal of enhanced services and CPE from the FCC's regulatory jurisdiction under Title II of the Federal Communications Act, 47 U.S.C. §§201-224. In addition, the "Commission 'unbundled' CPE from basic transmission services by discontinuing rate regulation of CPE and ordering that CPE be sold separately from basic communications service in a competitive market." CCIA v. FCC, 693 F.2d at 205 (footnote omitted). Finally, the FCC determined that its new regulatory policy in this area would be effective only if inconsistent state regulation of CPE and enhanced services were foreclosed. Thus, the FCC ordered that the provision of such equipment and services, even when used for intrastate communication, would no longer be subject to state tariffing. Id.

Thereafter, the FCC's rulings were challenged on various grounds by several of the parties to the original proceedings, several state regulatory commissions as amici curiae, and numerous intervening parties, including the Western Union Telegraph Company. In particular, the state regulatory commissions argued that the FCC's decision to preempt inconsistent state regulation of CPE and enhanced services constituted an invasion of the ratemaking authority reserved to the states under the Federal Communications Act. In this regard, the state regulatory commissions asserted that the FCC erred when it ordered them "to remove CPE charges from their tariffs." CCIA v. FCC, 693 F.2d at 214.

The court, however, rejected this assertion because "the objectives of the Computer II scheme would be frustrated by state tariffing of CPE," and "when state regulation of intrastate equipment or facilities would interfere with achievement of a federal regulatory goal, the Commission's jurisdiction is paramount and conflicting state regulation must necessarily yield to the federal regulatory scheme." Id. (Footnote omitted.) In this regard the court noted that the FCC had established a policy of promoting the efficient utilization and full exploitation of the interstate telecommunications network, and that such an objective would be advanced by fostering competition in the CPE market and giving consumers a broad selection of CPE. Thus, the court concluded that the FCC had acted reasonably in determining that the "only way to give consumers an unfettered choice of CPE was to require that charges for CPE be completely severed from transmission rates on both the federal and state levels." CCIA v. FCC, 693 F.2d at 215. Accordingly, the court held that the FCC had acted properly in preempting state tariffing of CPE used in intrastate communications.

I discern no basis in CCIA v. FCC, however, for concluding that the application of the licensing and bonding requirements

of R.C. Chapter 1310 to the Western Union Telegraph Company's money transfer service has been similarly preempted by the FCC. In particular, such application will not, in any sense, conflict with the specific regulatory goals and policies of the FCC enunciated by the court in CCIA v. FCC. In this regard, the FCC has preempted individual state tariffing of CPE used in both intrastate and interstate communications as a means of fostering a more competitive marketplace for CPE that will, in turn, offer consumers a wider choice of such equipment at lower prices. Application of the licensing and bonding requirements of R.C. Chapter 1310 to transmitters of money, including Western Union, does not, however, present an instance of a state attempting, either directly or indirectly, to exert its ratemaking authority over CPE used in intrastate or interstate communications. Rather, such requirements are intended to further the legitimate interests of the state in ensuring that companies which offer money transmittal services to the public are reputable, responsible, and adequately capitalized, and that such services will be provided "honestly, fairly, equitably, carefully, and efficiently." R.C. 1310.03(A)(2). The surety bond requirement of R.C. 1310.04(A), for example, provides a measure of insurance for those consumers who entrust money to companies such as Western Union for transmittal in the event that such money is lost or misdirected. See note two, supra. Thus, far from being antagonistic, the respective policies that underly the General Assembly's enactment of R.C. Chapter 1310 and the FCC's regulatory guidelines described in CCIA v. FCC are, in their consumer orientation, mutually compatible.

Accordingly, I conclude that application of R.C. Chapter 1310 by the Department of Commerce to a money transfer service of the type provided by Western Union is not foreclosed by the decision in CCIA v. FCC.<sup>7</sup> Further, I discern nothing in the provisions of the Federal Communications Act of 1934, either express or implied, that evidences an intent on the part of Congress to displace application of a state law such as R.C. Chapter 1310 to a telegraph company that offers money transfer services simply because the company utilizes combined telecommunication and data processing facilities in performing those services. It also does not appear that such application will henceforth render impossible a telegraph company's continued compliance with the federal law as administered and enforced by the FCC. Jones v. Rath Packing Co.; Florida Lime and Avocado Growers, Inc. v. Paul. Thus, I am persuaded that the application of R.C. Chapter 1310 to the Western Union Telegraph Company is not preempted by federal law.<sup>8</sup>

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<sup>7</sup> Indeed, the Supreme Court, in a case presenting questions of federal preemption and the scope of the FCC's regulatory jurisdiction in a context more closely analogous to that presented in CCIA v. FCC than to the situation now posed by Western Union, recently held that § 2(b) of the Federal Communications Act of 1934, 47 U.S.C. § 152(b), "bars federal preemption of state regulation over depreciation of dual jurisdiction property for intrastate ratemaking purposes." Louisiana Public Service Commission v. Federal Communications Commission, 476 U.S. \_\_\_\_\_, \_\_\_\_\_, 106 S. Ct. 1890, 1892 (1986).

<sup>8</sup> Western Union also asserts that application of R.C. Chapter 1310 to its money transfer service violates U.S.

Finally, you have asked whether such application of R.C. Chapter 1310 may be prohibited as a result of prior regulatory action on the part of the Public Utilities Commission of Ohio in this area. Western Union states that in 1979 it filed for changes in its tariff with the Public Utilities Commission for the purpose of effecting a cancellation of the rates, rules, and regulations applicable to its money transfer service in Ohio, and that the Public Utilities Commission acceded to Western Union's request for detariffing. Western Union claims that as a result of this determination by the Public Utilities Commission, no further regulation of its money transfer service is permitted by the State of Ohio, including regulation of that service by the Department of Commerce pursuant to R.C. Chapter 1310.

Assuming that the Public Utilities Commission did accept Western Union's application for detariffing of its money transfer services, such action does not deprive the Department of Commerce of its statutory power to regulate those services under R.C. Chapter 1310. In this regard, I am aware of no authority for the proposition that action taken by one state department or agency in its sphere of regulatory authority may be presumed to unilaterally foreclose the exercise of a power vested in another state department or agency under the governing statutes of that department or agency. Cf., e.g., 1984 Op. Att'y Gen. No. 84-007 (R.C. 5123.19 imposes upon the Director of Mental Retardation and Developmental Disabilities the duty of licensing any "residential facility," as defined in R.C. 5123.19(A)(1), even though such facility may also be certified by the Department of Public Welfare (now the Department of Human Services) under R.C. 5103.03). Thus, in the absence of a statutory provision to the contrary, the Department of Commerce is empowered to apply R.C. Chapter 1310 to the money transfer service of the Western Union Telegraph Company, notwithstanding a decision by the Public Utilities Commission of Ohio to remove such service from the Commission's tariffing jurisdiction.

Accordingly, based upon the foregoing it is my opinion, and you are advised that a telegraph company that performs money transfer services, whereby it receives money from one person and, upon payment of a fee therefor, subsequently utilizes telecommunication or data processing facilities to transfer that money to another person, is subject to the licensing requirements of R.C. Chapter 1310.

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Const. art. I, §8, cl. 3 by imposing direct and indirect burdens upon interstate commerce. The power to determine the constitutionality of the General Assembly's enactments rests exclusively with the judiciary. State ex rel. Davis v. Hildebrant, 94 Ohio St. 154, 169, 114 N.E. 55, 59 (1916); 1962 Op. Att'y Gen. No. 2769, p. 53 (syllabus, paragraph one). Thus, as a member of the executive branch of government, it would be inappropriate for me to venture a judgment about the constitutionality of R.C. Chapter 1310 as applied in this instance.