

OPINION NO. 89-035

Syllabus:

In providing a payment service for the acceleration of a single mortgage debt of a person whose mortgage note permits acceleration, a mortgage banking company does not qualify as a debt pooling company under R.C. 4710.01.

To: Michael Miller, Franklin County Prosecuting Attorney, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 16, 1989

I have before me your request for my opinion concerning whether a company that offers certain mortgage acceleration services qualifies as a debt pooling company and is thus prohibited, unless properly licensed, from offering the services in Ohio.

The provisions governing debt pooling companies are set forth in R.C. Chapter 4710. Debt pooling companies are prohibited from operating in Ohio, R.C. 4710.02, unless they were incorporated no later than November 15, 1962 and are licensed and regulated by the legislative authority of a political subdivision. R.C. 4710.03. The penalty for violating this prohibition is a fine of fifty to one thousand dollars, or imprisonment for thirty days to six months, or both. R.C. 4710.99. The definition of "debt pooling" company is set forth in R.C. 4710.01, which provides:

As used in sections 4710.01, 4710.02, and 4710.99 of the Revised Code:

(A) "Person" includes individuals, partnerships, associations, and corporations.

(B) "Debt pooling company" means any person doing business as a budget counseling, debt management, prorating, or debt pooling service, or holding itself out, by words of similar import, as providing services to debtors in the management of their debts, and contracting with a debtor for a fee or other thing of value;

(1) To effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor;

(2) To receive from the debtor and disburse to his creditors any money or other thing of value.

You ask whether a mortgage banking company that provides services for persons who wish to make accelerated mortgage payments qualifies as a debt pooling company under the above definition. This service would be provided to persons whose mortgage notes permit accelerated payment of their mortgage debts. The company would make the monthly mortgage payments to a person's mortgage servicer from funds transferred to the company by that person. Because the amount transferred from the person to the company would be more than that necessary for each mortgage payment, the person would be able to pay off additional amounts of principal each year and would save significant sums in interest.

It is unclear at first glance whether providing the above service qualifies the mortgage banking company as a debt pooling company under R.C. 4710.01 when that company offers payment services to a person in relation to just one specific debt. The statute appears to apply only if a company provides assistance to a person in managing or pooling that person's various debts, as evidenced by the use of language such as "debt pooling" and "budget counseling." Further evidence for this interpretation is found in R.C. 4710.01(B)(2), which provides that a debt pooling company contracts with a debtor to "disburse to his *creditors* any money...." (Emphasis added.)

To determine whether this interpretation is correct, I turn to an examination of the purpose of this legislation, since effectuating the intentions of the General Assembly is the polestar of statutory construction. See *Carter v. City of Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946); *Cochrel v. Robinson*, 113 Ohio St. 526, 149 N.E. 871 (1925). Only after the purpose of the statute has been determined can the terms be read in context. *Ohio Dental Hygienists Association*

v. *Ohio State Dental Board*, 21 Ohio St. 3d 21, 487 N.E.2d 301 (1986); *Black-Clawson Co. v. Evatt*, 139 Ohio St. 100, 38 N.E.2d 403 (1941).

Legislation that prohibited and regulated debt pooling companies was enacted by many states, including Ohio, in response to abuses by such companies. Milstein and Ratner, *Consumer Credit Counseling Service: A Consumer-Oriented View*, 56 N.Y.U. L. Rev. 978, 980 (1981). These abuses included charging exorbitant fees, providing infeasible repayment plans, collecting money from debtors but failing to pay their creditors, and failing to obtain the cooperation of some creditors, but leading debtors to believe all their debts would be settled. *Id.* The Ohio prohibition and regulation, contained in R.C. Chapter 4710, was upheld as a valid enactment and not violative of due process and equal protection constitutional guarantees in *State ex rel. Clark v. Brown*, 1 Ohio St. 2d 121, 205 N.E.2d 377 (1965). The court noted:

"Debt pooling" may be defined as the making of an agreement with a particular debtor (sometimes debt-ridden and desperate), whereby such debtor agrees to pay a certain sum of money periodically to one engaged in the debt-pooling business, who, for a consideration (frequently substantial), distributes the same among designated creditors in conformity with the plan formulated by the one engaged in the debt-pooling business and the creditors. And see the definition in Section 4710.01, Revised Code.

Id. at 121 n. 1, 205 N.E.2d at 379 n.1.

Thus, the purpose of R.C. Chapter 4710 was clearly to prohibit companies that assisted consumers in managing their various debts by pooling those debts and arranging a payment plan. Cf. *Black's Law Dictionary* 364-65 (5th ed. 1979) (defining "debt pooling" as an "[a]rrangement by which [a] debtor adjusts many debts by distributing assets among several creditors, who may or may not agree to take less than is owed..." (emphasis added); 15A Am. Jur. 2d *Collection and Credit Agencies* §17 (1976) (describing a debt pooler as one who "regularly collects certain sums of money from the debtor and distributes the same among his various creditors according to an agreed plan of modification or extension entered into between the [debt pooler] and the creditors") (footnote omitted and emphasis added). *Accord* Annotation, *Legislation Regulating, Taxing, or Forbidding Business of Debt Adjusting*, 95 A.L.R. 2d 1354 (1964).

As I stated previously, the language of R.C. 4710.01(B) appears to include only those companies that provide a true debt "pooling" service—that is, a service that assists a person in managing his various debts. This interpretation is consistent with the legislative purpose behind the enactment of R.C. Chapter 4710. Thus, I conclude that the definition of debt pooling company in R.C. 4710.01 includes only those companies that assist persons in managing their various debts. A mortgage banking company that provides a payment service to a person in relation to just one specific mortgage debt, therefore, does not qualify as a debt pooling company under R.C. 4710.01.

Accordingly, it is my opinion and you are advised that, in providing a payment service for the acceleration of a single mortgage debt of a person whose mortgage note permits acceleration, a mortgage banking company does not qualify as a debt pooling company under R.C. 4710.01.