



December 20, 2013

Via email: Anya.Binsacca@doj.ca.gov
and U.S. mailAnya M. Binsacca
Deputy Attorney General
Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004**RE: Opinion No. 13-901**

Dear Ms. Binsacca:

I write on behalf of the League of California Cities (League) in reference to your Request for Views dated October 21, 2013, in the matter of reverse cellular telephone vending machines.¹

The League's view is that reverse cellular telephone vending machines indeed constitute "secondhand dealers" within the meaning of Business and Professions Code section 21626(a), and furthermore, that section 21628(b) requires that a live, natural person verify an intended seller's identification at the site of the transaction.

On September 10, 2013, Mr. Gregory Priamos, Riverside City Attorney, provided you with a request to render an opinion regarding these two issues. That letter outlines in detail the substantive reasons why the Business and Professions Code sections relating to secondhand dealers are applicable to this new method of disposing of stolen property with relative impunity.

An example of how one entity that operates these machines proposes to do business may be helpful for your analysis. In May 2012, the City of San Bruno received an application from such

¹ The League of California Cities is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this Request for Views from the Attorney General as having such significance.

an entity for a secondhand dealer license to conduct business within the City. The vendor's representative contacted the police department's command staff to explain how the machine works. The representative explained that at the time of the transaction, the machine takes a photograph and thumbprint of each seller, copies the seller-provided identification card (such as a driver's license), obtains the seller's signature "certifying" that the seller is the lawful owner of the goods, and captures the serial number of the item deposited in the machine. The machine then immediately dispenses cash to the seller. The vendor's employees would empty the machines weekly, and then deliver the goods to their headquarters (in this case, San Diego), where the goods would be held for 30 days, after which they would be sent to an undisclosed contractor who recycles or otherwise disposes of the goods, presumably after paying the vendor.

Upon questioning by the City's police department staff, the vendor's representative admitted that the machine does not verify or correlate any of the information provided at the time of the transaction. The machine does not compare the photograph of the seller taken at the time of the transaction with the seller's photo on the identification card. The machine does not determine if the seller's thumbprint belongs to the individual named on the identification card, or to the individual signing the "certification" at the time of the transaction. The machine also will not determine if the seller is the person listed on the identification card or the person signing the "certification". The machine cannot tell if any, or all, of the photograph, signature, and thumbprint belong to the seller, another person, or several different persons. The machine does not check to see if the serial number of the goods is visible, readable, complete, altered, or missing.

The vendor's representative also could not assure the police department that verification and correlation of information submitted at the time of the transaction would occur after the goods were removed from the machine and sent to the company's headquarters. Presumably, once the goods arrive, the vendor, having already paid the sellers in cash, has every incentive to do nothing that would delay the process of turning the good around for future sale to another entity whose identity is undisclosed.

In San Bruno's case, the vendor's representative actually provided the police department with a sample "transaction report" from their machine. This document contained the seller's signature, which was different than the signature on the driver's license that the seller provided to the machine at the time of the transaction.

This example demonstrates why the Business and Professions Code definition of "secondhand dealer" applies to these transactions, and why a live, natural "person" is required to verify the seller's identity at the time of that transaction.

The cell phones (and other electronic items) that these machines accept are all manufactured with factory serial numbers; this feature, among other uses, allows the item to be traced in the event it is lost or stolen. The vendor is admittedly in the business of buying "secondhand tangible personal property," which is defined by section 21626(a) of the Code as personal property that bears a serial number. The website of the vendor that approached San Bruno states that it is "...an automated, consumer self-service kiosk that quickly evaluates and buys back used consumer electronics directly from consumers for cash." The Code does not exclude

transactions that occur by remote or mechanical means. Therefore, these vendors meet the definition of a "secondhand dealer" under California law.

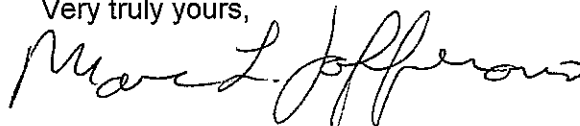
The live, natural "person" requirement is a key element of secondhand dealer transactions, primarily to deter individuals from selling stolen property. There is no live, natural "person" at the kiosk location to verify anything. In addition, as related in the example above, the machine itself is unable to verify or correlate any of the information provided by the seller in real time. The website for the vendor that approached San Bruno admits as much when it notes that the only "validation" it can perform is making sure that the seller-supplied identification card appears to comply with the "methods used in all 50 states," but it is unclear what that means. The website makes the statement that it is "currently testing software for verifying ID's through facial recognition algorithms, the photo on the ID to the photos of the person we see through the cameras at the kiosk." As for the thumbprint, the vendor's website promises only that the thumbprint is "legible and acceptable by industry standards." The founder of this particular company states on the company's website that he "remains worried about their [the kiosk's] ability to match the seller with the ID presented..."

Interestingly, elsewhere on the the website for this particular company, it states that "Every transaction...is remotely monitored by one of our staff through a variety of cameras and imaging devices including verifying of government-issued IDs against the image of the seller, fingerprints, and device information." This statement directly contradicts the information provided to the San Bruno police department, and as noted above, the information in other sections of the vendor's website. Nowhere on the website does it state that all transactions are monitored in real time by a live, natural person, nor would there be any clear way for an outside entity to verify such a practice.

For these reasons, the League requests that you determine that reverse cellular phone vending machines constitute "secondhand dealers" under Business and Professions Code section 21626(a), and that you determine that a live, natural person must verify an intended seller's identification at the site of the transaction.

Thank you for your attention to this important matter.

Very truly yours,



MARC L. ZAFFERANO
City Attorney