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95-00175



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APR - 6 1995

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Honorable Kenneth R. McCartha
Superintendent of Banks
101 South Union Street
Montgomery, AL 36130

Banks and Banking - Checks -
Copies - Audits

State, county and municipal auditors may rely upon imaged checks produced by financial institutions instead of original checks when auditing state, county and municipal entities.

Pursuant to Code of Alabama 1975, Sections 5-4A-1 and 12-21-44, such electronic reproduction is admissible into evidence equally with the original.

Dear Mr. McCartha:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION PRESENTED

Whether under Alabama law state, county and municipal auditors may rely upon electronic images of checks produced by financial institutions, instead of original checks, when auditing state, county or municipal agencies.

FACTS AND ANALYSIS

Many financial institutions do not return canceled checks to account holders. Systems in which account holders do not receive physical checks in their account statements are referred to as "check truncation systems." The financial institution generally retains the canceled check for a certain number of years. For example, under the Bank Secrecy Act regulations, banks generally are required to retain canceled checks for a period of five years. See 31 C.F.R. § 103.33 (1994). The canceled check is retained sometimes as an original document, but more typically as a microfilmed or electronic image of the front and back of the check. The process by which a bank makes an electronic image of the front and back of the check is known as "check imaging." An image is created which is similar to photocopying or micro-filming except that the image is stored on magnetic or optical disk rather than on paper or film. The image of the check shows endorsements, signatures and other details and is as accurate, or more accurate, than photocopying or microfilm. Check images are stored on "write once" technology. This technology prevents the check image on the disk from being altered. Financial institutions provide the same security procedure to their storage and retention of check images as they apply to retention and safekeeping of other important documents.

Under check truncation systems, the account holder's record of the transaction usually is limited to a checkbook register entry and perhaps a retained carbon copy of the check. The financial institution can supply a reproduced electronic image of a canceled check, front and back, to an account holder upon request. In check imaging systems, many times the financial institution will provide the customer with a reduced image of the front of the check with the customer's account statement and will provide a reproduction of the front and back of a check upon request.

Pursuant to Alabama law, banks are authorized by statute to reproduce their records by any generally recognized reproduction process, and reproductions so made have the same force and effect as the original and are admissible into evidence equally with the original. Code of Alabama 1975, § 5-4A-1. Check imaging is a "generally recognized reproduction process" within the terms of § 5-4A-1. Check imaging generally is recognized in commercial industry, as shown by the large numbers of financial institutions using the technology.

Check truncation and check imaging are recognized generally in the law as well. Federal Reserve Regulation CC recognizes the practice of check truncation. Banks may enter into agreements by which a check may be presented to the paying bank by transmission of information describing the check rather than the original check. 12 C.F.R. § 229.36(c) (1994). Furthermore, the Internal Revenue Service has issued a Revenue Procedure acknowledging that banks are engaging in check imaging and not returning checks to customers. The Revenue Procedure states that the IRS will accept the account statements, including imaged checks, for auditing purposes. IRS Rev. Pro. 92-71, described in IRS Bulletin IR 92-84.

With regard to admissibility in evidence, Code of Alabama 1975, § 5-4A-1 states that a bank may cause any of its books or records to be reproduced by any generally recognized reproduction process, and the reproductions shall have the same force and effect as the original and be admitted into evidence equally with the original. Stringer v. State, 372 So.2d 378 (1979), held that microfilmed copies of canceled checks are bank records under the above statute and that such copies are admissible into evidence under Alabama law. Check imaging similarly provides reproductions of a check that are as accurate or more accurate than microfilming except that the image is stored on magnetic or optical disk rather than on film. Therefore, check imaging provides a "generally recognized reproduction process" of a check and under Stringer and Code of Alabama 1975, § 5-4A-1 imaged checks should be admissible into evidence.

CONCLUSION

Alabama banks are authorized by statute to reproduce their records by any generally recognized reproduction process, and reproductions so made have the same force and effect as the original and are admissible into evidence equally with the original. Check imaging is a "generally recognized reproduction process." In my opinion, a state, county or municipal auditor may rely upon electronic images of checks produced by financial institutions instead of original checks, when auditing state, county and municipal agencies. The electronic images returned with the periodic statement may show only the front of the check. An electronic image, microfilm or other acceptable reproduction of both the front and back of the check, must be available upon request and payment of any applicable service charge made during the time period applicable federal or state law

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requires a financial institution to retain cancelled checks
or reproductions thereof.

I hope this sufficiently answers your question. If our
office can be of further assistance, please contact Scott
Corscadden, Legal Division, Banking Department.

Sincerely,

JEFF SESSIONS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/SC/SWC
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