

MEMORANDUM OF LAW

DATE: August 15, 1985

TO: Ed Ryan, City Auditor and Comptroller

FROM: City Attorney

SUBJECT: Time of Payment and Computation Thereof For  
Purposes of Obtaining a Cash Discount Under a  
Contract For Materials or Services

You have asked several questions which I have rephrased as indicated below. My answers and a discussion follow each question.

QUESTION ONE

When sending a check by mail as a cash payment for an invoice, must the check be received and in the hands of the payee creditor before the expiration date of the discount period or is the obligation fulfilled when the City's check is placed in the United States Mail?

ANSWER ONE

The express terms of the contract itself at all times dictate the obligations of the parties, including the payment. In the absence of specificity in the contract, payment by check is an accepted commercial practice under the California Uniform Commercial Code (U.C.C. section 2511(2)) and constitutes payment when deposited in the mail.

#### DISCUSSION

48 Cal.Jur.3d, Payment section 1 discusses the obligation of "payment" as follows:

The Civil Code section 1478 defines payment as the performance of an obligation to deliver money. Payment has also been defined as that which the parties to a contract agree shall be accepted as such. *Strain v. Security Title*

*Ins. Co.*, 124 Cal.App.2d 195 (1954). And the word may sometimes denote a provisional payment, such as one that results from delivery and acceptance of a check.

The time agreed to by the parties controls the time for payment. *Easton v. Richeri*, 83 Cal. 185 (1890). Thus, the terms of the contract itself dictate when the payer's obligation is fulfilled. However, in the absence of such specificity in the

terms of the contract, the common law dictates the result.

Under the common law, the general rule is that a check is merely conditional payment of the obligation for which it is given and that it is never payment until the check itself is paid or otherwise discharged, unless it is expressly agreed to be taken as payment. *Utah Construction Co. v. Western Pac. Ry. Co.*, 174 Cal. 156 (1916). Such payment may be rejected by the payee, "but once a check is paid, the payment of the underlying debt which was therefore conditional becomes absolute and relates back to the date of delivery of the check." *Navrides v. Zurich Ins. Co.*, 5 Cal.3d 698, 706 (1971). Emphasis added.

"Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession. California Uniform Commercial Code section 1201(14). Generally, depositing a note in the post office, addressed to the payee and with postage prepaid is sufficient delivery. *Hale v. Bohannon*, 38 Cal.2d 458, 467-68 (1952).

## QUESTION TWO

How is the open time for payment computed for purposes of obtaining a cash discount under a contract for materials or services?

## ANSWER TWO

In computing the open time for obtaining a cash discount,

several factors need to be taken into account. The time within which an act (payment) may be done is extended by statutes one day when the last day falls on a Sunday or holiday. Secondly, under the California Uniform Commercial Code, the credit period runs from the time of shipment unless the invoice is postdated or delayed in dispatch, in which case the start of the credit period is delayed correspondingly.

### DISCUSSION

The beginning and end of the open period for payment for purposes of obtaining a cash discount are affected by several statutes. California Code of Civil Procedure section 13 states in pertinent part:

Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

The California Supreme Court has upheld the statute and interpreted Section 13 to include Sunday or a holiday. *Steele v. Bartlett*, 18 Cal.2d 573, 574 (1941). Civil Code section 11

echoes this enactment and has been similarly interpreted.

The California Uniform Commercial Code also contains a provision on this subject. Section 2310 entitled, "Open Time for Payment or Running of Credit; Authority to Ship Under Reservation" in paragraph (d) indicates: "Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period."

Official Comment 5 to the Uniform Commercial Code (UCC) accompanying the California Code interprets paragraph (d). It states:

Paragraph (d) states the common commercial understanding that an agreed credit period runs from the time of shipment or from that dating of the invoice which is commonly recognized as a representation of the time of shipment. The provision concerning any delay in sending forth the invoice is included because such conduct results in depriving the buyer of his full notice and warning as to when he must be prepared to pay.

While no California Court has expressly ruled on this

provision of the Uniform Commercial Code, it should be a reliable guideline for extending the open period for payment whenever the invoice is postdated or purposely delayed in dispatch beyond the time of shipment.

#### CONCLUSION

It is our recommendation that in each case you examine the terms of the contract and the invoice in order to determine the contractual obligations. If the contract is ambiguous, you should confer with the vendor in order to clarify the contractual obligation. We are available to confer with you or your staff to answer any further questions.

JOHN W. WITT, City Attorney

By

Stuart H. Swett

Chief Deputy City Attorney

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