

Opinion 89-37

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

STATE COMPTROLLER -- Powers and Duties (filing of registration statements by pawnbrokers)
LICENSING AND REGULATORY POWERS -- Pawnbrokers (authority to license)

GENERAL BUSINESS LAW, §§40, 52, 53: A license must be obtained from the the local government in order to carry on the business of collateral loan broker. In addition, a licensed collateral loan broker must file a registration statement with the State Comptroller in order to carry on the business.

You ask whether the conduct of a particular business would constitute the conduct of business as a collateral loan broker within the meaning of article 5 of the General Business Law.

The role of the State Comptroller in connection with collateral loan brokers (i.e. "pawnbrokers") is a limited one. Licensed collateral loan brokers must file a registration statement with the State Comptroller as a condition precedent to actually conducting business as such (General Business Law, §53; note subdivision e to the effect that the obtaining of a license from the applicable local governing body precedes the filing of the registration statement). The State Comptroller is also empowered to adopt forms for the filing of the required registration statement and he has done so (General Business Law, §53[h]; 2 NYCRR §15.7). He is further authorized to require the keeping of those "books, records, entries and reports as he may deem necessary" and is empowered to determine the "amount of surplus payable as abandoned property." (General Business Law, §55; 2 NYCRR §§15.1-15.6). In addition, the State Comptroller, in his capacity as sole custodian of the Abandoned Property Fund, oversees the compliance by collateral loan brokers with the provisions of the Abandoned Property Law, pertaining to such enterprises (Abandoned Property Law §§1301, 1315; State Finance Law, §95).

None of the functions assigned to the Comptroller, however, relate to

the licensing of collateral loan brokers, which is exclusively a power of local government (General Business Law, §§40, 41; see Riley v Prudential Society, Inc., 171 Misc 888, 13 NYS2d 921, affd 259 App Div 974, 19 NYS2d 963). Nor do they relate to a determination of who is, or is not, subject to the licensing requirements. Therefore, in our opinion, it is a matter for the local government, advised by counsel, to determine whether or not a particular business enterprise is a "collateral loan broker", being guided by statute (General Business Law, §52). Only after an affirmative determination is made and a license to engage in the business of collateral loan broking is obtained, does the State Comptroller's role come into play.

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Neil L. Coscio, Esq., Ass't Legislative Attorney
Department of Consumer Affairs, City of New York