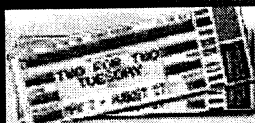


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[The Atlanta Journal-Constitution: 5/21/01]

DeKalb DA's bad check plan bounce

By LUCY SOTO
Atlanta Journal-Constitution Staff Writer

Letting a business take over government services can become a legal mess without close monitoring. At worst, it can leave taxpayers high and dry.

It's a hard lesson in privatization. And it's one the DeKalb County District Attorney's Office has learned recently.

DA J. Tom Morgan's office contracted last year with a San Clemente, Calif., company to create a bad check restitution program. American Corrective Counseling Services or ACCS would help merchants collect on bounced checks and avoid the red tape of taking those cases to court.

But the company also was charging a \$125 fee to check bouncers to attend an "educational class" that may never have been held. That meant a \$20 bounced check, once you also tacked on the \$25 fee typically charged by merchants, would cost \$170.

And ACCS wasn't even supposed to be dealing with checks under \$500. Those are handled by the solicitor's office, which had no contract with ACCS. Yet, records show all but a handful of the hundreds of letters it sent to demand payment were for amounts that small.

The company collected at least \$33,679 in fees for the class before terminating the DeKalb contract in March. It plans to hold on to that money. ACCS has said it could send out home-study materials or fly someone in to conduct the class.

ACCS also is accused of demanding payment without first allowing check writers to make the check good. Georgia law says check writers can only be held criminally responsible for passing a bad check if they fail to respond within 10 days to a letter sent by certified mail or registered return receipt.

All of this has landed ACCS in court facing a lawsuit.

"This is an idea of privatizing gone awry," says lawyer Gary Leshaw, who filed the suit for Selma Calaman and Christopher Cowan. "While a private company may be in it to make money, they still have to ensure they follow the rules."

Several calls last week to ACCS executives weren't returned. The firm's local attorney, Patricia Guilday, said she wouldn't comment.

In letters to the district attorney's office, the company says the DA's office approved all of its material and should have known ACCS was offering to handle any check under \$1,500. The materials mentioned that businesses should send a "courtesy notice" to check writers, but not how it should be sent or that it is

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required by law.

The company also is being sued in Iowa for similar issues. In all, ACCS has contracts in 58 counties in 11 states.

In DeKalb, ACCS pulled up stakes after the DA's office was swamped with complaints. Callers worried they'd be arrested and said they never received the required 10-day letter, according to Chief Assistant DA John Petrey. Many asked where they could attend the mandatory class. In fact, Petrey and Leshaw say they have found no evidence that the class was ever held.

How did it get to that point? Why wasn't DeKalb monitoring the program more closely?

Petrey says he was assured people were not targeted in the program unless they ignored a chance to make good on their checks.

"I didn't think any more of it," he says. "We didn't have much activity at all in the day-to-day operations."

Cowan, a local sheriff's deputy, knew about the law. That's why he was upset in February when he opened a letter from ACCS adding \$150 in fees to the \$12.50 check he bounced. The check was for his child's school lunch, and he'd already asked the bank to try to ferret out the error. Yet, the letter said ACCS had received a criminal complaint.

"The District Attorney will agree to WAIVE prosecution of the complaint if you attend a special educational class AND pay the above balance WITHIN 30 DAYS FROM THE DATE OF THIS NOTICE!"

The letterhead included the DA's name and county seal, and asked that checks be made out to the Stone Mountain Judicial Circuit. It warned recipients not to contact the business that filed the complaint. "This matter can ONLY be cleared through this office."

But Cowan knew he should have been able to settle up with the school directly. He also went in search of the criminal complaint mentioned in the letter. He went to every court in DeKalb. No one knew what he was talking about.

"I couldn't see how it had gotten that far," Cowan says. "This was a legal notice saying I was fixing to go to jail, and this was the first I heard of it."

Morgan says ACCS was recommended by several district attorneys that had used the firm in Western states.

"I don't know if this is a fluke, what happened in Georgia," Morgan says. "But I will certainly bring it up to other DAs' attention. As an elected official, you don't want letters going out that are basically illegal."

Morgan says he told ACCS it should return the class fees. But he can't make them. That likely will be settled in court.

Last month, the company offered to pay Calaman and Cowan \$1,000 each plus attorney's fees. Leshaw, their lawyer, wants the judge to rule his suit a class-action case.

He told the court he worried the latest offer was trying to "buy them off and make the class action disappear."

Cowan says he wants to press his case: "This is a profit-generating engine that is basically cloaked under the authority of the government. . . . There's no telling how many people this could affect."

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