

**DEPARTMENT OF INSURANCE****Legal Division, Office of the Commissioner**

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October 20, 2010

*By PDF and First Class Mail*

Robert W. Hicks, Esq.  
Robert W. Hicks & Associates  
501 West Broadway, Suite 800  
San Diego, CA 92101

Re: *Two Jinn, Inc. v. Government Payment Service, Inc.*  
Case No. SCV-247285 (Cal. Super. Ct. Sonoma County)

Dear Mr. Hicks:

This responds to your September 24, 2010 letter. In addition to that letter, I read the Court's September 8, 2010 "Order After Submission on Demurrer of Defendant Government Payment Services Inc. dba GovPayNet to the First Amended Complaint."

The California Department of Insurance ("Department") declines to exercise primary jurisdiction or initiate an enforcement action against Government Payment Service ("GPS").

Based on information presented to us, the Department believes GPS is transacting bail under the California Insurance Code. *See* Ins. Code §1800; *id.* § 1800.4; *id.* § 1800.7. Absent other applicable laws, GPS would be required to obtain a license from the Department and comply with all laws and regulations covering the transaction of bail in California.

However, Government Code Section 6159 ("Section 6159") permits counties and other public agencies to contract with companies for the payment by credit card, debit card or electronic funds transfer of non-felony bail by arrestees. Gov. Code § 6159(b)(1). The contract must be approved by "the governing body that has fiscal responsibility for that agency." *Id.* § 6159(c). "After approval is obtained, a contract may be executed with one or more credit card issuers, debit card issuers, electronic funds transfer processors, or draft purchasers." *Id.* § 6159(d).

If a company has a valid contract under Section 6159 to process bail by credit card, the Department reads Section 6159 as preempting Insurance Code laws related to bail. For example,

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if a sheriff's office contracts with Bank of America to provide Visa and MasterCard services at a jail, we do not believe Bank of America must obtain a bail license from the Department.

The Department is not entrusted with interpreting or implementing Government Code Section 6159. We therefore express no opinion as to whether GPS's contracts are valid under Section 6159. If GPS's contracts are invalid under Section 6159, based on the facts as we understand them, GPS would be subject to the Insurance Code, including the requirement of obtaining a bail license.

Finally, we note that Section 6159 permits credit card service contracts for payment of *non-felony* bail only. If GPS transacts credit card payments for felonies, it would not be covered by Section 6159.

Please promptly convey this letter to the Court and counsel for GPS.

Very truly yours,

/s/

Adam M. Cole  
General Counsel