

CRIMINAL USURY: One violates the criminal code of Missouri who charges in excess of 2% per month as interest for a loan.

7-19

July 17, 1934.



Honorable Vane C. Thurlo  
Prosecuting Attorney  
Linn County  
Linneus, Missouri

Dear Sir:

Your request for an opinion dated June 29th is as follows:

"The letter of your department dated June 20, 1934, addressed to Mr. R. C. Sherrod of Marceline, Missouri, and written by Hon. Wm. Orr Sawyers on behalf of your department has been presented to me, and wherein the writer states as his 'unofficial' opinion that the loan mentioned was usurious; and inasmuch as this letter has caused some debate I respectfully request the 'official' opinion of your department.

"The facts involved are as follows:

"On May 16, 1934, Mr. Sherrod went to the office of Mr. W. B. Erwin in Brookfield and asked that a loan be made him for sufficient money to pay off a \$200.00 loan on his car, and an additional \$50.00, to be paid direct to Mr. Sherrod. Mr. Erwin was, and is, an insurance agent and loan agent maintaining an office in Brookfield. Mr. Sherrod asked Mr. Erwin if the interest would be 2½ per centum per month and Mr. Erwin replied that his company did not figure it that way but that is what it would be, or words to that effect.

"Mr. Erwin wrote out a written application for a loan, which he handed to Mr. Sherrod, and which Mr. Sherrod signed. A copy of this application is herewith enclosed, the underlined portions being the parts filled in by Erwin before being signed by Sherrod.

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"There is also enclosed a copy of the figures prepared by Mr. Erwin and given to Mr. Sherrod some time after the loan was made. Mr. Sherrod agrees that these figures are correct, and states that the note, chattel mortgage, and other papers were made in favor of Erwin, and later transferred to The Lewis Investment Company of Kansas City, Missouri, and that this company paid the lien of U. C. C. in the amount of \$200.00, and paid him the sum of \$55.10 in money, and paid for insurance in the amount of \$8.40 on the automobile covered by the chattel mortgage he signed.

"Mr. Sherrod stated to me to-day that his letter of June 13, 1934, to your department was inaccurate wherein it stated that the loan granted by The Lewis Investment Company was in the amount of \$263.50, but that the loan was granted in the amount of \$350.00 payable in eleven monthly installments of \$20.00 each, and one installment (the last) of \$130.00.

"Mr. Sherrod does not state that The Lewis Investment Company received the \$52.50 referred to as "commission" but indicated that this was paid by that company to Mr. Erwin.

"Mr. Sherrod became dissatisfied with the loan after he was sent a copy of the agreement by The Lewis Investment Company, and tried to pay it off. After some correspondence the Investment Company agreed to accept the sum of \$315.17 as full payment, which he paid.

"At the time he signed the written application Mr. Sherrod did not read it, but signed it without reading it.

"In the opinion of your department, is the above transaction a usurious transaction, and can Erwin be prosecuted in this County, and if so, for what?

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"All acts performed by The Lewis Investment Company were done in their office in Kansas City, Missouri, and we assume that the officers of that Company could not be prosecuted in this County.

"If I correctly read the case of Frischmann vs. Schultz, 55 S. W. (2), 313, 1. c. 318, and cases therein cited, the commission paid to a broker for negotiating a loan is not considered in determining whether the loan is usurious."

In your request you refer to the letter of Mr. R. C. Sherrod of Marcelline, Missouri, dated June 13, 1934, which is as follows:

"On the 16th day of May, 1934 I applied in person to Mr. W. B. Erwin, Brookfield, Missouri, in regard to obtaining a loan on my car. I asked Mr. Erwin if the interest rate was  $2\frac{1}{2}\%$  per month. He stated his company did not figure it that way but it amounted to the same thing. On this information I assumed I was getting the loan under the Small Loan Act, which is  $2\frac{1}{2}\%$  per month on the unpaid balance. Mr. Erwin made out a number of papers which included a chattel mortgage, note, information sheet in regard to the description of the car, etc., and was handed these to sign, but due to the fact that there was so much reading matter and the interest rate had been explained I never read these papers.

"The papers were sent in to the Lewis Investment Company of Kansas City, Missouri, 1301 Oak Street, and the loan granted in the amount of \$263.50. The following charges were made by the company: 3% filing fee \$6.00, straight interest 8% \$28.00, and broker's fee \$52.50 to Mr. Erwin, making a total loan of \$350.00. I was unaware of these charges until after I had accepted the check and received a copy of the contract from the Lewis Investment Company at a later date. After questioning Mr. Erwin I found that the above named company was not operating under the Small Loan Act, but was operating under the

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Investment Act, and that Mr. Erwin was acting only as a broker of the above named investment company. The intentions of the Small Loan Act are being violated by this unscrupulous method of evading the law."

Our answer to Mr. Sherrod's letter was as follows:

"Under the law it is not possible for the Attorney General's office to render official opinions to private persons in private matters. On the other hand it is my unofficial opinion, from the facts stated in your letter, that the loan which you speak of is usurious and the matter should be taken up with your Prosecuting Attorney or your Grand Jury for their consideration."

There are several statutes in Missouri affording remedies where persons exact in excess of the legal rate of interest from a borrower. All of Chapter 14, R. S. Mo. 1929, dealing with "interest" touches expressly or indirectly on usury. In said chapter the Legislature has laid down 6% as a legal rate when not expressed, and up to 8% when the parties agree in writing. Persons are prohibited from taking more than the legal rate, and subjected to a civil suit when they take more than allowable by law. By virtue of said chapter defendants are allowed to plead usury as a defense in civil courts even against money brokers and where the person loaning has exacted usurious interest his lien is declared invalid. No place in said chapter is there a criminal remedy afforded. The great bulk of cases in Missouri have been determined by applying the provisions of this chapter in civil suits, and the civil remedies of Chapter 14 have been generally applied. On the other hand one who has exacted interest in excess of the law may be prosecuted in an action by the State according to provisions not found in this chapter, but found in the criminal code, and it is the purpose of this opinion to consider your submitted facts from the point of view of a prosecutor about to prosecute for the crime of exacting illegal interest contrary to the criminal code. We are making no pretense of applying the civil code on usury or Chapter 14 R. S. Mo., 1929, and the civil remedies therein set out.

Section 4420 R. S. Mo. 1929, makes it a crime to dispose of a note knowing it to be usurious, and states the law thus:

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"Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation or firm, who shall sell, assign, transfer or in any manner dispose of any bond, bill of exchange, note or contract whatsoever, knowing the same to be usurious, without first giving the purchaser or assignee thereof notice of its usurious character, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days."

Section 4421, R. S. Mo. 1929, defines the crime of receiving greater interest than 2% per month thus:

"Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation or firm, who shall take or receive, directly or indirectly, by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money or other commodities, any interest at a rate greater than two per cent per month, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law."

Under one set of facts as submitted, viz: That the note was for \$350.00 while the borrower actually received \$263.50 consideration for the note, leaving \$87.00 as the percentage charged, we find that by computation this would figure out a rate of interest of 24 6/7% annually. Taking the other set of facts set out in your letter, viz: That the note was for \$350.00 and the borrower actually received \$255.10 consideration for the note, leaving \$94.80 as the percentage charged, we find by the compu-

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tation that this would figure out a rate of interest of 27 3/35% annually. This would be more than 2% per month under either mode of computation.

Under the above sections the facts as submitted by you would justify a statutory charge against The Lewis Investment Company and Mr. Erwin their agent, for making said loan, and would also justify a charge against the agent of the loan company, Mr. Erwin, who undoubtedly transferred and assigned the loan to The Lewis Investment Company.

CONCLUSION.

Under the provisions of the above sections the crime against The Lewis Investment Company and their agent can be prosecuted in the jurisdiction (county) where The Lewis Investment Company through their authorized agent, entered into an agreement to exact the excessive interest or the Investment Company can be prosecuted in the jurisdiction (county) where it actually exacted the excessive interest. Under the provisions of Section 4421 supra, the agreeing to receive excessive interest could be a crime in one jurisdiction, while the receiving excessive interest could be a crime in another jurisdiction, all growing out of one transaction.

The crime of assigning a note, knowing it to be usurious, should be prosecuted only in the county where the agent made the assignment. The facts do not state that there was an assignment, or where it was made.

Not having sufficient facts it is not possible for us to tell you positively that your county has jurisdiction to punish the Investment Company or Mr. Erwin for the crime. The above rules and law would determine that, when you apply the facts to the rules and law, and this can be done as well by you as by us.

In the case of State v. Haney, 108 S. W. 1080; 130 Mo. App. 95, 1. c. 101, the Appellate Court passed on the sufficiency of an information charging an offense under the above statute, and the court said:

"Our statute, regardless of the motive or intent of the defendant, makes it an offense to take, or agree to take, for the use of

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money any interest at a rate greater than two per cent per month. The criminality of the act does not depend upon the intent with which the usurious interest is received but upon the fact that it is received, hence defendant's intent in charging and receiving the usurious interest constituted no part of the offense and is not an element of the offense."

The case of *Fischman v. Schultz* 55 S. W. (2d) 313, 1. c. 318, cited you you in your letter was a civil suit and the appellate Court there was determining the civil rights of a defendant in a civil suit who did not plead usury as a defense in said suit as the Legislature had so provided for him in civil actions by virtue of Section 2843 R. S. No. 1929. The Court there held that defendant did not plead usury, hence he was not entitled to a directed verdict in said civil action even if there was evidence of usury. True, the Court by way of dictum made the broad statement, "The charge of a commission by the agent of the borrower, or by an independent broker, is not usurious". They based their statement on civil cases where civil rights were involved, and were interpreting at the time statutes offering only a civil remedy. In none of these cases did the Court have under consideration the provisions of Sections 4420 or 4421 *supra*, where a defendant was being charged with a crime. It is the opinion of this office that the above case is no authority to support a contention that Sections 4420 or 4421 have not been violated under the facts submitted in your letter. By the very terms of these sections a broker and his agents are made expressly liable for their criminal acts, and since in the instant case the rate of interest computes at more than 2% per month, it is our opinion that both the Investment Company and their agent are criminally liable.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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