

USURY: Construction of Criminal Statute on Usury.

April 7, 1937.

4-15



Honorable Joseph C. Crain  
Prosecuting Attorney  
Christian County  
Ozark, Missouri

Dear Mr. Crain:

This is to acknowledge your letter of March 30th, in which you request the opinion of this Department. Your letter is as follows:

"I have a matter before me in regard to a prosecution for usury and I think an opinion from your office would settle the question.

"A local concern which hires a number of employees pays these employees on the first and fifteenth of each month. It has been the practice of some of these employees to assign their wages to an outsider at a discount a few days before pay day. For example; in one instance one employee made the following transaction: He was working for a salary of \$40.00 per month and received \$20.00 each pay day. On February 20, 1937, he received from John Jackson the sum of \$18.00 and made the following assignment to Jackson 'I hereby assign and sell to John Jackson, wages due me from Rhodes Manufacturing Company in the sum of \$20.00. Date February 20, 1937. Signature, Frank Harris.'

"Jackson presented the assignment to the Rhodes Manufacturing Company on March 1 and collected the \$20.00. The foreman of this plant has complained about the matter and contends that Jackson should be prosecuted for usury.

"I would appreciate an opinion from your office as to whether or not Jackson has been guilty of usury."

Your question is whether or not the facts as set forth in the second paragraph of your letter of request would constitute the basis for an indictment or information for usury.

Section 4421, R. S. Mo. 1929, 4 Ann. Statutes, p. 4032, provides as follows:

"Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation or firm, who shall take or receive, or agree to 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."

This statute is an old one but there do not seem to have been very many prosecutions under same reaching the appellate courts. We find that the constitutionality of this law was attacked in *Ex parte Berger*, 193 Mo. 16, and its constitutionality upheld, and on page 32 the court said:

"We have no doubt whatever, when the whole act is read together, that it was the intention of the Legislature that it should apply to every person who should take any interest directly or indirectly by means of commissions or brokerage charges or otherwise in excess of a rate of two per cent per month, and, after all, the purpose of all rules of

construction is to arrive at the intent of the lawmaking power. The whole section when read together manifests an intention to cover the exaction of usurious interest which is direct and also an exaction of usurious interest of more than two per cent per month by means of commissions or brokerage charges, and hence this third constitutional objection to the act based upon verbal criticism is without foundation."

An information charging usury is found in State v. Haney, 130 Mo. App. 95, l. c. 97, and the case was affirmed and the information, as written, approved by the Springfield Court of Appeals.

We might suggest that under Section 2969, R. S. Mo. 1929, assignment of wages, salaries or earnings, not earned at the time the assignment is made, shall be null and void.

It is our opinion that, under the facts as set forth in your letter, under a sufficient indictment or information a submissible case could be made charging the crime of usury.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General

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APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General