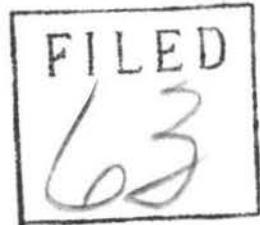


CORPORATIONS: Small loan companies not permitted to contract a charge for attorney fees and collection costs when making loans.

February 8, 1937.

2-8



Honorable O. H. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Sir:

We acknowledge your request for an opinion dated January 27, 1937, which reads as follows:

"A company licensed to operate under the 'Small Loan Act' has submitted the enclosed note to this Department for an opinion as to whether the incorporation of the phrase 'together with costs of collection and a reasonable attorney's fee, if placed in the hands of an attorney for collection' in the note is contrary to the provisions of the Small Loan Law and whether or not collection of such fees would be a violation of the Small Loan Law.

"I, therefore, am referring the above matter to you and will appreciate an opinion thereon at your early convenience."

Corporations organized under the small loan act are licensed by the State of Missouri to make loans in accordance with the provisions of Article VII, Chapter 34, R. S. Mo. 1929, and Section 5547 R. S. Mo. 1929, provides:

"Upon the filing of such application and the approval of said bond and the payment of said fee the licensing official shall issue a license to the applicant to make loans in accordance with the pro-

visions of this article for a period which shall expire with the first day of July next following the date of its issuance. Such license shall not be assignable."

Section 5556 R. S. Mo. 1929, provides for the small loan corporations' powers and limitations in contracting a loan, and reads:

"Every licensee hereunder may loan money, not exceeding in amount the sum of \$300.00, and may charge, contract for and receive thereon interest at a rate not to exceed two and one-half per centum per month. Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, services, brokerage, commission or other thing or otherwise shall be directly or indirectly charged, contracted for or received, except the fees allowed by law actually and necessarily paid out by the licensee to any public officer for filing, recording or releasing in any public office any instrument securing the loan, which fee may be collected when the loan is made or at any time thereafter. No interest or charge in excess of those permitted by this article shall be made, contracted for or received, and if any such is charged, made, contracted for or received, the contract of loan and all evidence thereof and security and lien therefor shall be void and of no effect, and the licensee shall have no right to collect or receive any principal, interest or charge whatsoever of or for such loan."

Section 655, R. S. Mo. 1929, provides in part:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import,* * * *."

CONCLUSION.

You have presented a matter of statutory construction.

This department is of the opinion that the above statutes prohibit a small loan company from contracting with a client to charge that client for costs of collection and attorney's fees should the loan note be placed in the hands of an attorney for collection.

The language of section 5556, supra, is unequivocal, and the Legislature expressly prohibits such loan company from making charges, other than interest charges, and fees allowed by law actually and necessarily paid out to a public officer for filing, recording or releasing any instrument securing the loan. Such extraneous charges are not allowable, even indirectly. When such anticipated items of expenditure, such as costs and attorney's fees are contracted for in the loan note, evidencing the contract of a loan, then the note becomes a void instrument and the licensee loses all right to receive principal or interest which he otherwise would have been entitled to have received.

Respectfully submitted

APPROVED:

WM. ORR SAWYERS
Assistant Attorney General.

J. E. TAYLOR
(Acting) Attorney General.