

SMALL LOAN LAW:

BANKS AND BANKING: Small Loan Companies domiciled in another state may not have appraisers or agents in this state to solicit small loans in this state without a license.

April 17, 1942

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Hon. D. R. Harrison  
Commissioner of Finance  
Jefferson City, Missouri

Dear Mr. Harrison:

This is to acknowledge receipt of your letter of March 28, in which you request an opinion of this department. Your letter is as follows:

"I am enclosing a copy of a letter written to Aliber & Company, 310 Equitable Building, Des Moines, Iowa, under date of January 10, 1942, and also a copy of a letter written to five persons in towns in North Missouri whose advertisements appeared to be in violation of the Small Loan Law. It developed upon inquiry that these five persons were soliciting loans for Aliber & Company.

"On February 7, 1942, Mr. J. Francis O'Sullivan, Attorney for Aliber & Company, filed a 'Statement of Facts and Brief of Law in support of Aliber & Company's Non-compliance with Missouri's Small Loan Act' in this Department and filed a copy of the Statement of Facts in your office.

"I shall appreciate an opinion as to whether the manner in which Aliber & Company and its 'appraisers' or 'solicitors' are operating in Missouri is in violation of the Small Loan Law."

As stated in your letter, the attorneys for Aliber and Company of Des Moines, Iowa, have filed with our department a statement of facts and brief in support of their activities in Missouri, in which they contend that they are not violating the Missouri Small Loan Laws and are not subject to the jurisdiction of the Commissioner of Finance of

the State of Missouri.

Aliber and Company, a co-partnership located at Des Moines, is duly licensed by the State of Iowa to make small loans under what is known as the Iowa Small Loan Act, Iowa Code, Sec. 9438-F1 to 9438-F25, and it has what it terms "appraisers" located in various cities in North Missouri to take applications for loans which are submitted to the office of Aliber and Company in Iowa for their approval or rejection. The so called appraisers in Missouri advertise in the local papers in the communities where they operate, and also send out circular letters to prospective customers, which letters might be termed "sales talks" advising the prospective customers of a plan for the borrower to borrow money from this company. The rate of interest, however, is not mentioned in the advertisement nor in the circular letters. Aliber and company has submitted, with their brief and statement, specimen copies of the application for a loan which must be made by the borrower, which is in the usual and customary form made by small loan companies, together with a specimen of a note and chattel mortgage which must be executed by the borrower before he secures the money on his loan, if a chattel mortgage is given. It is stated in the application as follows:

"The note and chattel mortgate submitted herewith shall not become effective until the same are received by the company at its office in Des Moines, Iowa, and the company's check in the sum for which the application is approved is there deposited in the mails. If this application is approved in whole or in part, we hereby appoint the United States mails as our agent and request the loan as approved be forwarded by mail in an envelope addressed to (Name of applicant)."

Also, in the chattel mortgage it is stated that:

"This mortgage and the note secured thereby are made and executed under the laws of the State of Iowa and their validity and construction shall be determined by and under the laws of said state."

There are certain parts of the chattel mortgage which are invalid under the laws of the State of Missouri, however, it is not necessary to pass on these clauses in this opinion. In the brief submitted by the company, there are statements and also a contention that the contracts entered into by the borrowers are Iowa contracts and are not subject to the Laws of Missouri, and this point is stressed at all times.

Section 8150, R. S. Mo. 1939, of the Missouri Small Loan Act provides:

"That no person, co-partnership, or corporation shall engage in the business of making loans of money, credit, goods or things in action in the amount or to the value of three hundred dollars (\$300.00) or less, and charge, contract for or receive a greater rate of interest than eight (8) per centum per annum therefor, except as authorized by this article and without first obtaining a license from the commissioner of finance hereinafter called the licensing official."

Section 8157, R. S. Mo. 1939, provides:

"No person, co-partnership or corporation so licensed shall make any loan provided for by this article, under any other name or at any other place of business than that named in the license. Not more than one place of business shall be maintained under the same license, but the licensing official shall issue more than one license to the same licensee upon the payment of an additional license fee and the filing of an additional bond for each license." (Under-scoring ours)

And, Section 8163, R. S. Mo. 1939, provides that no person, co-partnership or corporation except as authorized by this chapter shall charge more than 8 per centum per annum upon

the loan, use or forbearance of money of the value of \$300.00 or less.

Section 8169, R. S. Mo. 1939, provides that the person violating any of the provisions of this article shall be guilty of a misdemeanor.

In their brief they have subdivided same into four divisions, viz:

- (A) All of the loans made by it were made in Iowa, not in Missouri,
- (B) The "business of making loans of money" by Aliber and Company was carried on in Iowa, not in Missouri, and the loans made to Missouri residents were made in interstate commerce,
- (C) The Missouri Small Loan Act, aforesaid, has no extraterritorial effect,
- (D) The Missouri Act contemplates interstate lending transactions.

The writer of this opinion will not undertake to reply to each of the legal contentions made by the attorneys for Aliber and Company for the reason that he deems it unnecessary in the writing of this opinion.

It may be admitted that it is the intention of the lender to make the loan contract an Iowa contract, and thereby, the company would not come under the Missouri Small Loan Act and required to take out a license in this state. The three common conflict of law rules governing the validity of contracts provide that contracts are to be governed by the laws of (a) the place of making, (b) the place of performance, or (c) the place intended by the parties. Beale Conflict of Laws (1935) Vol. II, pages 1079-1086-1090. It is expressly stated in all the loan papers that the parties to the contract are to be governed by the laws of Iowa.

Conceding, for the sake of argument, that the contracts, according to the usual conflict of law rules, would be governed by the laws of Iowa, it does not necessarily

follow that the courts of Missouri are required to recognize and enforce such contracts, where there is an effort and intention to avoid or escape the application of the laws of Missouri.

The method of doing business indicates an intention to avoid the laws of this state. The practice of sending applications to the office in Iowa and requiring the payments to be made by having them mailed direct to the company at Des Moines, may be a needlessly cumbersome way to do business since the lender has an office in Missouri where applications for loans may be taken, and to all intents and purposes, an agent with limited authority, it would seem that he would be permitted to accept payments on loans. All of this points unerringly to the fact that the lender has adopted a method of doing business for the purpose of avoiding the securing of a license in this state and other requirements of the small loan laws of Missouri.

Missouri has a small loan law very similar to the one in Iowa which has for its purpose the regulation of this type of business and to permit one to reach across state lines in the manner herein described would thwart the very purposes of the law.

We think that the activities of the Iowa lender are such that it is engaging in the small loan business in Missouri without the required license, and this is so, even though some of the business acts are performed in Iowa and the loan contracts are formally closed and performed in that state.

We think that the language used by Mr. Justice Holmes in the case of *Horning v. District of Columbia*, (1920) 254 U. S. 135, 41 Sup. Ct. 53, 65 Law Ed. 185, is applicable to the situation here:

"\* \* \* \* It may be assumed that he intended not to break the law, but only to get as near to the line as he could, which he had a right to do; but if the conduct described crossed the line, the fact that he desired to keep within it, would not help him."

If a person in Missouri makes application by mail to Aliber and Company and secures a loan, the loan would be

in keeping with the laws of Missouri and Iowa, and to all intents and purposes would be valid. However, we have a different situation here, in that Aliber and Company has so called appraisers in Missouri who keep offices, run advertisements for loans, and, by circular letters, indicate the rate of interest to be charged.

If this company may have appraisers in a half dozen cities in North Missouri, it may place one in every city in the state and as many as the business may warrant. Other companies would do likewise and we would have a condition whereby these companies could say to the Missouri authorities, "We are engaged in interstate commerce. You cannot regulate us." This would bring about a chaotic condition in the small loan business. And, accordingly, the companies could also say to the Iowa authorities, "We are engaged in interstate commerce and you cannot supervise us," a position it could not very well take. This we gather from the following statement in the brief:

"\* \* \* If evils ensue with respect to interstate transactions, Congress would be ready to intervene in the public interest. \* \* \* ."

We think the above position is wholly untenable.

We think that an endorsement of the modus operandi of Aliber and Company would have a far reaching effect on the administration of the small loan law in the State of Missouri, and would also open wide the doors for small loan companies in neighboring states to have so called appraisers in the various communities of the state to solicit loans in this manner, and would, therefore, put it beyond the power of the Commissioner of Finance of Missouri to regulate or supervise the loans so made.

#### CONCLUSION

It is, therefore, the opinion of this department that the plan adopted and used by Aliber and Company as set forth

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above, is a violation of the Missouri Small Loan Law, and it will be necessary for them to secure a license from the Commissioner of Finance of the State of Missouri in order for them to continue their operations in this state.

Respectfully submitted,

COVELL R. HEWITT  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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