

BANKS: Resume' of money lenders'
TRUST COMPANIES: activities under Missouri
BUILDING AND LOAN ASSOCIATIONS: Statutes.
SMALL LOAN COMPANIES:
LOAN AND INVESTMENT COMPANIES:
REGISTERED PAWNBROKERS:

March 9, 1943

Hon. Raymond J. Lahey
Representative of St. Louis
House of Representatives
Jefferson City, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of recent date, in which you request the opinion of this department on the questions asked therein. Your letter is as follows:

"The House Committee investigating money lending agencies has authorized me to write you concerning Section 4813, Revised Statutes of Missouri, 1939, and request of you an opinion as to this law concerning its application to the various money lending groups authorized by other state statutes to engage in specialized types of money lending, including banks, trust companies, building and loan associations, companies operating under loan and investment act, registered pawn brokers, and small loan lenders operating under the small loan law."

Your question is, what application does Section 4813, R. S. Mo. 1939, have to the various money lending corporations or agencies authorized by the statutes. We take it that you desire to know whether or not, in those instances where the statutes permit a rate of interest in excess of the provisions of Section 4813, supra, would it be a violation of the criminal statute for companies to loan money in excess of two per cent per month.

Section 4813, supra, was enacted by the General Assembly of Missouri in 1899 (Laws of 1899, page 167) and provides, R. S. Mo. 1939, 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 section was held to be constitutional in the case of *Ex Parte Berger* (1905) 193 Mo. 16, and the court, at page 25, made this observation:

"Prior to the enactment of Section 2358 on the 14th of April, 1899, the taking of usurious interest had never been declared a criminal offense by the General Assembly of the State of Missouri, and it is now earnestly insisted by learned counsel for petitioner that this section is unconstitutional, because it is not within the power of the Legislature to make usury a crime and punish it as such."

And the court further said, in this opinion, l. c. 28:

"The taking of interest, then, beyond a legal rate is granted to no person in this State, and the act now before us simply makes the unlawful act of taking interest in excess of two per cent per month a misdemeanor. Laws against usury are founded on principles of public policy, principles that have for ages been recognized, and this act seeks only to punish that which has for many ages been considered unlawful in itself. The right to regulate interest by legislative enactment being one conceded to be within the power of the Legislature, that body can regulate or prohibit it altogether. And if previous legislation on this subject punishing the infractions of usury laws by forfeitures of the interest have proved ineffectual to check the evil, it was perfectly competent for the Legislature to adopt more drastic measures and make it criminal. * * * * *

Notwithstanding this law has been on the statute books since 1899, the only prosecution under this statute reaching the appellate courts is the case of State v. Haney, 130 Mo. App. 95 (1908) wherein a conviction was sustained and the statute upheld.

There is also a section, 4812 R. S. Mo. 1939, which makes it a misdemeanor to "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 giving the purchaser or assignee thereof notice of its usurious character."

Your inquiry is, as we understand it, as to whether the enactment of the small loan law would supersede or permit those licensed under the small loan act to charge more than two per cent interest per month. The small loan law is nothing more than a special grant of authority by the Legislature which permits those who comply with the provisions of the Act to charge the rates of interest as prescribed therein, which are in excess of the two per cent per month set out in Section 4813, supra. An applicant under the small loan act who takes out a license, submits himself to examination by

the licensing official, and meets all the other requirements of the Act, is authorized to loan money at a rate not to exceed three per cent per month on any loan made of \$100 or less in principal amount, and two and one-half per cent per month on any loan made of more than \$100 and not more than \$300 in principal amount.

The small loan act takes those who are licensed under the act from under the provisions of the general usury statutes and the criminal provisions of Section 4813, supra, and they are not violating Section 4813, nor, or they liable to the civil penalties provided by other provisions of the law. There are certain civil penalties against one who loans money at a greater rate of interest than eight per cent per annum, but it is only a crime to loan money in excess of two per cent per month, except by those who, by special legislative grant, are permitted to do so under the state law.

You refer in your letter to banks, trust companies, building and loan associations, companies operating under the Loan and Investment Act, registered pawn brokers, and small loan lenders. It seems unnecessary for us to go into the laws governing the activities of each of the above mentioned agencies, but they would be guilty of a crime under Section 4813, supra, if they loaned money in excess of two per cent per month, unless they had been given special legislative authority to do so. Usury has been defined as the receiving and taking, or contracting to receive and take, either directly or indirectly, a greater sum for the use of money than the lawful interest.

It might be well for us to call your attention to Section 8215 R. S. Mo. 1939, under the building and loan law, which provides as follows:

"No premium, loan fee, fines or interest or interest on such premium, that may be charged by or accrue to the said corporation according to the provisions of this chapter, shall be deemed usurious, and the same may be collected as debts of like amount are now by law collected: Provided, that this section shall be no protection against any unreasonable and extortionate charge, loan fees, fine, premium, or interest made by such corp-

oration in its spirit usurious and oppressive, and such practices shall be open to investigation and correction by the courts of the state."

The courts of this state have held that "although the premiums and interest aggregate more than the legal rate of interest, yet under the provisions of this section they are not usurious if the premium is fixed in the manner authorized by law." *Cover v. Mercantile Mut. Building & Loan Ass'n*, 93 Mo. App. 302; *Stanley v. Verity*, 73 S. W. 727, 98 Mo. App. 632; *Callison v. Trenton Building & Loan Ass'n*, 72 S. W. 477, 98 Mo. App. 677.

It is a misdemeanor for a pawn broker to charge or receive more than two per cent per month for any loan made by him, according to Section 15394, R. S. Mo. 1939, which is as follows:

"It shall be unlawful for any pawnbroker to charge or receive more than two per cent per month for any loan made by him."

Upon conviction such pawn broker shall pay a fine of not less than \$50 nor more than \$100. Therefore, under the statute, a pawn broker may charge or receive not more than two per cent per month on a loan. However, if he charges or receives more than that he is guilty of a misdemeanor and may lose his security in addition thereto.

There are also statutes regulating the activities of pawn brokers, dependent on the class of city in which the pawn broker resides. These sections are 6485, 6609, 6986, 7196, 7483 and 7691.

The loan and investment companies are organized under the provisions of Article 8, Chapter 33, R. S. Mo. 1939, and, under Section 5421, these companies loan money to persons and may charge \$1.00 for each \$50.00 or fraction thereof loaned, for examination or investigation of the character and circumstances of the borrower, and, where a loan is made, secured by a chattel mortgage or lien upon an automobile, a sum not greater than \$20.00 on account of extra hazards involved in such loan may be made. These charges must be in good faith and not arbitrarily made for the purpose of increasing the

cost of the loan to the borrower. However, in the event the lender retains all or part of the hazard fee charge for its own use, the borrower has the option of delivering and conveying the automobile or motor vehicle securing such note, regardless of condition, in full satisfaction of the balance due thereon.

It seems to have been the intention of the Legislature to have granted such legislative authority to certain companies operating under this particular law to charge in excess of eight per cent per annum (the statutory maximum for the use of money) in excess of this amount, if the company complies with certain provisions of the statutes. This may be by way of interest, or it may be by way of investigating fees and other charges, and those who operate under this law, if they comply with the provisions of this particular law in all particulars, would not be guilty of violating Section 4813, R. S. Mo. 1939.

It might be well for us to call your attention to the fact that a company or individual may charge more for the use of money than the lawful rate of interest permitted by law, and not be guilty of a violation of the criminal law. However, he may be guilty of usury and may lose the excess interest charge or may lose the security pledged to secure the loan and other civil penalties.

If an individual or company charges more than two per cent interest per month for the use of money and does not operate under some act of the legislature giving him such authority he is guilty of violating Section 4813, supra.

CONCLUSION

It is, therefore, our opinion that those individuals or companies who loan money, such as banks, trust companies, building and loan associations, loan investment companies, registered pawn brokers, and small loan companies, who comply with the statutes regulating their particular type of business, are not guilty of violating the criminal law provided in Section 4813, R. S. Mo. 1939.

Respectfully submitted,

APPROVED:

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