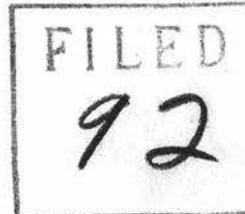


USURY: Note given for the purchase price of an article exacts usurious interest if the note provides for a larger rate than the law allows. Interest charged for the use of money in excess of 2% per month constitutes usury.

November 21, 1949.

11/22/49

Hon. Jasper R. Vettori,
First Associate Prosecuting Attorney
Municipal Courts Bldg.,
14th & Market Streets,
St. Louis, Missouri.



Dear Mr. Vettori:

This office is in receipt of your correspondence regarding excess interest charged on a loan made to finance the sale of a used car, in which the bill of sale given to the purchaser reads as follows:

"An individual purchased a used car and was given a bill of sale reading as follows:

Price		\$750.00
Down (Trade	\$	
Payment (Cash	\$250.00	
Difference		\$500.00
Time Difference and Insurance		50.00 D.D.
Time Balance		15.00 F.F.
Total Time Price	\$	

Time Balance payable in 11 installments of \$40.00 each payable on the 14 of every month beginning 7-14-49
12 monthly payments \$275.00 to be refinanced.

At the same time the purchaser executed a note in the amount of \$715.00 to the dealer, and of course, that figure is arrived at by the eleven monthly payments of \$40.00 each, plus the balance of \$275.00, which is to be refinanced."

The question is whether a usurious interest charge was made for the use of this money loaned.

Your attention is first directed to Section 4813, R. S. Mo. 1939, which reads 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."

In the case of General Motors Acceptance Corporation v. Weinrich (262 S. W., 425), the court said:

"It is true, a loan may be cloaked in the outward form and appearance of a purchase, in which case that will not change the substance of the transaction nor hide the usury. But if there is a real and bona fide purchase, not made as the occasion or pretext for a loan, the transaction will not be usurious even though the sale be for an exorbitant price, and a note is taken, at legal rates, for the unpaid purchase money. The reason is that the statute against usury is striking at and forbidding the exaction or receipt of more than a specified legal rate for the hire of money and not of anything else; and a purchaser is not like the needy borrower; a victim of a rapacious lender, since he can refrain from the purchase if he does not choose to pay the price asked by the seller. So that a sale in good faith of property, merchandise, or of an indorsement, or guaranty, or even of credit, if the seller has no other interest in the transaction, is valid and not open to the objection of usury whatever the price. White v. Anderson, 164 Mo. App. 132, 136, 147 S.W. 1122. And if the sale be a real and not a pretended transaction, it will not make any difference even though the seller have a cash price and a larger price where the sale is on time or credit. If the buyer chooses to purchase on time and pay the larger price, the taking of a note for the latter will not constitute usury. Hogg v. Ruffner, 1 Black 115, 118-120, 17 L. Ed. 38.* * *." (Underscoring ours).

Following the above-cited case, we assume the "Time Difference and Insurance" of \$50.00 and the "Time Balance" of \$15.00 are valid charges not to be considered as interest, the balance due on the purchase price would be \$500.00 plus these two charges, or \$565.00. A note was executed for \$715.00 payable in eleven installments of \$40.00 each and the balance of \$275.00 to be then re-financed. From the information supplied, any amount charged in excess of the \$565.00,

representing the balance due on the purchase, would be considered interest paid for the use of money; i.e. the difference between \$565.00 and \$715.00 (the amount of the note executed by the purchaser) would be considered interest, and amount to \$150.00.

In the case of *In re Bibbey*, 9 Fed. (2d) 944, involving the sale of an automobile on time for more than cash price, the court said:

"It is manifest that any person owning property may sell it at such price and on such terms as to time and mode of payment as he may see fit, and such sale, if bona fide, cannot be usurious, however unconscionable it may be. A vendor may well fix upon his property one price for cash and another for credit, and the mere fact that the credit price exceeds the cost price by a greater percentage than is permitted by the usury laws is a matter of concern to the parties, but not to the courts, barring evidence of bad faith.* * *."

"There is no question but what the seller may name a greater price when he sells upon time than when he sells for cash, and that is not an unusual practice and custom in merchandising. Of course, in calculating the amount of addition to the cash price, where the goods are sold upon time, what would be a proper interest upon the investment is taken into consideration; the chances of loss and failure to pay, and the insurance necessary to cover the transaction, and the overhead expense for carrying on a business of that kind, all find a place in ascertaining how a merchant may profitably sell upon time and the price to be charged; but this does not make a usurious contract. This does not make it a loan of money, and the collection of interest is merely a method by which the seller calculates the amount that he must charge when selling upon time to make a profit,* * *."

While both the *Weinrich* and *Bibbey* cases hold a dealer has the right to sell a car on time for more than the cash price thereof the court also makes clear that a note given for the purchase price of an article may bear usurious interest. In this connection the court said in the *Weinrich* case cited above:

"The fact that a note is given for the purchase price of an article will not prevent the note from being usurious if the note calls for more interest than the law allows."

Under the circumstances set forth in your request for an opinion the purchaser executed a note for \$715.00 to cover the balance due on the purchase, of \$565.00 to be paid in eleven payments of \$40.00 plus a balance of \$275.00 which was to be refinanced. The

purchaser would pay in eleven installments \$440.00, which would be allocated \$90.74 as interest on unpaid balance and \$349.26 as payment on the principal if the interest rate is computed at 2% per month, the highest rate of interest allowed under the above quoted statute (R. S. Mo. 1939, Sec. 4813). Computing the interest at the rate of 2% per month would leave a balance due of \$215.74 rather than the \$275.00 which was the amount stated in the bill of sale to be refinanced. In order that there remain due \$275.00 after eleven installments are paid, a higher rate than 2% per month would necessarily be exacted.

It would appear then from the limited facts submitted that an interest charge in excess of 2% per month has been exacted.

In the holding of the Weinrich case in which the court said, "But if there is a real and bona fide purchase, not made as the occasion or pretext for a loan, the transaction will not be usurious even though the sale be for an exorbitant price, and a note is taken at legal rates, for the unpaid purchase money. * * * * Of course, the fact that a note is given for the purchase price of an article will not prevent the note from being usurious if the note calls for more interest than the law allows."

The interest to be charged on \$565.00 was to be \$150.00 during the period of time the eleven monthly installments were being paid. This charge would be in excess of 26% even if computed on the basis of the entire sum remaining unpaid for a year with the interest rate still higher when computed on the basis of interest charged on unpaid balance.

CONCLUSION.

Interest charged for the use of money in excess of 2% per month constitutes usury. A note given for the purchase price of an article exacts usurious interest if the note provides for a larger rate than the law allows.

Respectfully submitted,

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APPROVED:

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JEM/LD