

OPINION REQUEST #203 ANSWERED BY LETTER

August 26, 1963



Mr. Paul C. Martin  
Consumer Credit Supervisor  
Division of Finance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Martin:

This letter of advice is in reply to your inquiry concerning the right of consumer credit lenders to charge the contract rate of interest on consumer credit loans after their maturity. The factual situation you presented was outlined in a letter of considerable length you received from a licensee, a copy of which accompanied your inquiry.

It appears that your examiners are making the following contention:

Unless the maturity of the note was accelerated at least one month prior to maturity, in accordance with Section 408.175 RSMo 1959, it cannot bear interest at the rate originally contracted for, computed on the unpaid balance for the time actually outstanding until paid.

A reading of Section 408.175 RSMo 1959 discloses that such statute is addressed solely to notes whose maturity is accelerated, and contains a directive touching pre-computed interest which, if followed, simply guarantees that the borrower will not have to pay interest over a period during which he has not had the use of the original sum borrowed. It is difficult to see how Section 408.175 can be cited as prohibiting interest at the contract rate after maturity.

Since the notes in question are all fully matured and in default, we are not concerned with the question of

acceleration of notes treated in Section 408.175 and General Regulation "D". However, Section 408.175 does disclose the legislative intent touching interest charges on pre-computed interest notes whose maturity has been accelerated when it provides:

" \* \* \* and thereafter the note or loan contract shall bear interest at the rate originally contracted for, computed on unpaid balances for the time actually outstanding from the installment date following the date of acceleration until paid."

With reference to the right to collect interest charges we perceive little or no difference between a note whose maturity has been accelerated and a note which has matured and is in default, and no reason seems apparent why the latter note should not bear interest "until paid" just as a note whose maturity has been accelerated. It is reasonable and proper to apply the legislative intent so evident in Section 408.175.

We can say of our own law as was said of the Ohio Small Loan Act in 1935 in the case of Ohio Loan Company v. Porychuk, et al., 34 N.E. 2d 1021, 1.c. 1022, 1023:

" \* \* \* There is nothing in the statute which in any way controls the maturity date or in any way fixes a different rate of interest before and after maturity. Therefore, we are remitted to the contract between the parties and the only reasonable construction that may be placed upon that contract is that defendants agreed to pay three percent per month on the unpaid balance until the loan is paid.

"It is our understanding that the law is well established that a valid contract entered into by the terms of which the borrower agrees to pay a rate authorized by law the loan carries that rate both before and after maturity. Whatever anyone may think about the sound public policy of this legislation, there is express authority for a charge of three percent per month upon a loan under three hundred dollars."

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The general rule which has been followed in Missouri for many years in relation to interest on a note after maturity is stated in the following language from Macon County v. Rodgers (1884), 84 Mo. 66, l.c. 68:

" \* \* \* It is, however, no longer an open question in this state, this court having held in Broadway Savings Bank v. Forbes, 79 Mo. 226, that a note bearing a certain rate of interest until due, bears the same rate after maturity. To the same effect is Borders v. Barber, 81 Mo. 636."

The factual situation disclosed in the letter accompanying your inquiry brings to our attention a quoted provision appearing in the particular notes held by the licensee providing that "additional interest for delinquency" may be charged. Such quoted provision cannot be reviewed unless a copy of the note is available, and for that reason the remarks made in this letter of advice are not directed to such fact.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

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