

December 17, 1971

OPINION LETTER NO. 456
Answer by letter-Cole

Mr. H. Duane Pemberton
Commissioner of Finance
Post Office Box 716
Jefferson City, Missouri 65101



Dear Mr. Pemberton:

This is in response to your letter requesting an opinion from this office on a question which we understand to be as follows:

"What finance charge can be levied on the credit sales of mobile homes, trucks, or automobiles that have a cash sale price in excess of \$7,500.00?"

You are correct in assuming that Missouri's Motor Vehicle Time Sales Law is inapplicable to new mobile homes, trucks or automobiles having a cash sale price in excess of \$7,500.00. The act only affects sales of "motor vehicles" as defined in Section 365.020, RSMo 1969:

"(5) 'Motor vehicle', any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, or bus having a cash sale price of seven thousand five hundred dollars or less primarily designed or used to transport persons or property on a public highway, road or street;" (emphasis added)

Similarly, the subject matter of transactions covered by Missouri's Retail Credit Sales Act is limited to "goods" (specifically excluding mobile homes, trucks, or automobiles), having a cash sale price of \$7,500.00 or less. Section 408.250, RSMo 1969.

The only remaining statutes that could regulate credit sales of new mobile homes, trucks, or automobiles costing over \$7,500.00 are the Missouri usury statutes, Sections 408.020-070, RSMo 1969, which provide that a loan with an agreed upon interest rate exceeding eight percent per annum is usurious, Section 408.030, RSMo 1969, and that interest paid above this amount is recoverable with costs and attorneys fees. Section 408.050, RSMo 1969.

The Missouri courts have held that if a transaction is not a lending of money but is a bona fide sale of merchandise on credit the transaction is not within the scope of the usury statutes. This view has been expressed by the Kansas City Court of Appeals in *Wyatt v. Commercial Credit Corporation*, 341 S.W.2d 348 (Mo. 1960) and by the Springfield Court of Appeals in *Securities Investment Company v. Hicks*, 444 S.W.2d 6 (Mo. 1969) and *General Contract Purchase Corporation v. Propst*, 239 S.W.2d 563 (Mo. 1951). Whether the transaction is a bona fide credit sale is, of course, a question of facts to be determined from the circumstances of each case. However, the Kansas City Court of Appeals has set down the following guidelines to aid in determining the real nature of the transaction:

"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. (Citations). 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."

General Motors Acceptance Corp. v. Weinrich, 262 S.W. 425, 428 (Mo. 1924), quoted in Wyatt v. Commercial Credit Corporation, supra, at 352.

In summary, it is our view that neither Missouri's Motor Vehicle Time Sales Law or Retail Credit Sales Act applies to the sale of new mobile homes, trucks, or automobiles having a cash sale price in excess of \$7,500.00. Furthermore, the Missouri usury statutes apply only to loans of money. Consequently, as concerns an above mentioned vehicle, costing over \$7,500.00, Missouri does not limit the finance charges on a retail installment contract, time payment plan or similar commercial credit transaction, unless the whole transaction is, in fact, "a mere pretense and a sham in order to camouflage the real facts." General Contract Purchase Corporation v. Propst, supra, at 567.

Very truly yours,

JOHN C. DANFORTH
Attorney General