

USURY:

A national bank may charge interest at the rate permitted by state law, or at a rate of one percent in excess of the discount rate prescribed by the federal reserve bank for the district in which the national bank is situated, whichever is higher.

OPINION NO. 343

November 21, 1973

Honorable Kenneth J. Rothman  
State Representative, District 77  
90 Aberdeen Place  
Clayton, Missouri 63105



Dear Representative Rothman:

This official opinion is issued in response to your request dated October 25, 1973, in which you inquire about the propriety of a national bank's charging interest to an individual borrower which is in excess of the interest rate established by state law.

12 U.S.C., Section 85, applicable to national banks, reads in pertinent part as follows:

"Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter. . . ."

It can be seen that this statutory provision allows the national banks to charge interest rates in excess of those prescribed by state law, if the federal reserve bank for the district in which the national bank is situated has established a discount rate for ninety-day commercial paper which is within

Honorable Kenneth J. Rothman

one percent of the maximum rate permitted by state law. Missouri has no special provisions for interest rates permitted to banks organized under state law. Any such provision, indeed, would seem to be an impermissible classification of lenders under the prohibition of Article III, Section 44 of the Missouri Constitution.

It is unusual for national banks to enjoy a preferred provision, but the authority of Congress to establish national banks has been long recognized. McCulloch v. Maryland, 4 Wheat. 316 (1819). Congress also has the authority to determine which provisions of state law are to apply to national banks. Davis v. Elmira Savings Bank, 161 U.S. 275 (1896); Franklin National Bank of Franklin Square v. New York, 347 U.S. 373 (1954).

It seems clear from the statute that national banks in Missouri have a dual frame of reference by means of which the validity of their interest charges on loans to individuals may be gauged.

#### CONCLUSION

It is the opinion of this office that a national bank may charge interest on loans to individuals at the rate permitted by state law, or at a rate of one percent in excess of the discount rate for ninety-day commercial paper as established by the federal reserve bank for the district in which the national bank is situated, whichever is the higher.

The foregoing opinion, which I hereby approve, was prepared by my special assistant, Charles B. Blackmar.

Very truly yours,



JOHN C. DANFORTH  
Attorney General