



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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ATTORNEY GENERAL

January 15, 1975

OPINION LETTER NO. 17

Honorable J. William Holliday
Prosecuting Attorney
Clark County
220 North Morgan Street
Kahoka, Missouri 63445

Dear Mr. Holliday:

This letter is in response to your request for an opinion on the question whether a Missouri bank violates the law when it charges on a loan to a corporation a rate of interest which is in excess of the lawful rate that can be charged an individual when the stockholders of the corporation are required to sign the note individually or when the stockholders are required to sign the note individually as guarantors.

With respect to your question, we assume that the proceeds of the loan were paid to the corporation by the lender and that the individuals signing the note did so for the purpose of lending their credit to the corporation. Consequently, the individual signers are accommodation parties under the Uniform Commercial Code, Section 400.3-415, RSMo 1969.

The Missouri Usury Laws do not apply to corporations (Sections 351.385(7), 408.060, RSMo 1969, and 408.035, C.C.S. 3 H.S. H.C.S.S.S.S.B. 1, Second Extraordinary Session, 77th General Assembly). Section 408.060 provides in part:

". . . no corporation shall, . . . interpose the defense of usury in any such action, nor shall any bond, note, debt, contract or obligation of any corporation or any security therefor be set aside, impaired or adjudged

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invalid by reason of the rate of interest which the corporation may have paid or agreed to pay hereon."

Section 408.035, Senate Bill No. 1, provides in part:

"Notwithstanding the provisions of section 408.030, it is lawful for the parties to agree in writing to any rate of interest in connection with any

(1) Loan to a corporation,"

Therefore, as to the corporation it is clear that the notes mentioned in your question is not usurious. As to the individuals signing as accommodation parties, we find no Missouri cases precisely on point. However, the weight of authority in other jurisdictions holds that where a state statute denies a corporation the right to plead the defense of usury, an accommodation endorser or other guarantor or surety of a corporate obligation may not defend on the grounds of usury. See annotation 63 A.L.R.2d §12. Therefore, this office is of the opinion that where individuals have signed a corporation note as accommodation parties, the courts of the state would not allow them to assert that the note is usurious.

Very truly yours,



JOHN C. DANFORTH
Attorney General