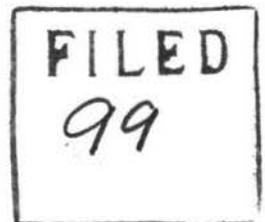


April 9, 1975

OPINION LETTER NO. 99
Answer by Letter - C. A. Blackmar

Honorable Clarence H. Heflin
State Representative, 78th District
State Capitol Building, Room 304
Jefferson City, Missouri 65101



Dear Representative Heflin:

This letter is in response to your request for an opinion as to whether the provisions of Senate Bill No. 1 of the Second Extraordinary Session of the 77th General Assembly will prevent a loan to an individual or a group of individuals, the proceeds of which are to be used in a business or for the purpose of acquiring an interest in a business, from being secured by a first or second mortgage on residential real estate if the parties intend the loan to be a "business loan" under the bill.

Section 408.015 of the bill contains the following definitions, inter alia:

"'Business loan' shall mean a loan to an individual or a group of individuals, the proceeds of which are to be used in a business or for the purpose of acquiring an interest in a business. The term shall also include a loan to a trust, estate, co-operative, association, or limited or general partnership.

* * *

"'Residential real estate loan' shall mean any real estate used or intended to be used as a residence by not more than four families.

Honorable Clarence H. Heflin

"'Residential real estate loan' shall mean a loan made for the acquisition, construction, repair, or improvement of real estate used or intended to be used as a residence by not more than four families. The term shall also include any loan made to refinance such a loan. No loan secured by residential real estate shall be considered to be a business loan."

But for the last sentence in the definition of "residential real estate loan" contained in Section 408.015, a loan could satisfy the definition of a "business loan" as used in that section, even though it were secured by "residential real estate." However, the last sentence providing, "No loan secured by residential real estate shall be considered to be a business loan.", leaves no room for ambiguity as to its meaning. A loan secured by residential real estate otherwise falling within the definition of a "business loan" by virtue of the express language in Section 408.015 is not a business loan for the purposes of Senate Bill No. 1, Second Extraordinary Session, 77th General Assembly.

Very truly yours,

JOHN C. DANFORTH
Attorney General