

SMALL LOAN ACT:) Authorization for insurance plan for "Small
) Loan Companies" not approved. Sec. 5556, R. S.
BANKS & BANKING:) 1929, discussed.

February 12, 1937.

2-16



Honorable O. H. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Moberly:

This is to acknowledge receipt of your letter of January 12, in which you request the opinion of this Department. Your letter is as follows:

"This Department heretofore has held that a licensee under the Small Loan Law could not withhold funds from a borrower for the purpose of paying the premium on an insurance policy covering personal property pledged as security for a loan.

"I now have an inquiry from Mr. John W. Creekmur, Attorney, Chicago, Illinois, enclosing a copy of an opinion of the Attorney General of the State of Illinois and an approved form of Authorization to Purchase Insurance, all bearing upon the particular question referred to herein. The Small Loan Law of the State of Missouri is substantially the same as that of the State of Illinois, particularly as to charges which may be made, contracted for or received. In view of the opinion of the Attorney General of the State of Illinois, bearing upon the question of withholding funds from the borrower for the purpose of paying the insurance premium on personal property mortgaged to the licensee, I would like an opinion from

Your office on the same question, in order that the future policies of this Department, relative thereto, may be definitely established.

"For your information I am enclosing the letter received from Mr. Creekmur, together with the copy of the opinion from the Attorney General of the State of Illinois and approved form of Authorization to Purchase Insurance, which enclosures you will please return with the opinion requested herein."

As we understand your question it is whether or not the plan submitted to you, whereby the borrower gives written authority to the "Small Loan Company" (licensee) to purchase insurance on the property given as security to the company to secure the loan, and whether your Department may approve the submitted Authorization to Purchase Insurance, enclosed with your request.

We note that you say that you have heretofore held that a licensee under the Small Loan Law could not withhold funds from a borrower for the purpose of paying the premium on an insurance policy covering personal property pledged as security for a loan, and we agree with that statement.

Under the provisions of the "Small Loan Act," Section 5556, R. S. Mo. 1929, it is provided as follows:

"Every licensee hereunder may loan money, not exceeding in amount the sum of \$300.00, and may charge, contract for and receive thereon interest at a rate not to exceed two and one-half per centum per month. Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, services, brokerage, commission or other thing or otherwise shall be directly or indirectly charged, contracted for or received, except the fees allowed by law actually and necessarily paid out by the licensee to any public

officer for filing, recording or releasing in any public office any instrument securing the loan, which fee may be collected when the loan is made or at any time thereafter. No interest or charge in excess of those permitted by this article shall be made, contracted for or received, and if any such is charged, made, contracted for or received, the contract of loan and all evidence thereof and security and lien therefor shall be void and of no effect, and the licensee shall have no right to collect or receive any principal, interest or charge whatsoever of or for such loan."

It will be noted that said section provides that in addition to the interest, namely, two and one-half per centum per month, that no further or other charge or amount whatsoever for any examination, services, brokerage, commission or other thing or otherwise shall be directly or indirectly charged, contracted for or received, except the recording fees. And if the licensee does violate any of the provisions of this section the contract of loan and all evidence thereof and security and lien therefor shall be void and of no effect, and the licensee shall have no right to collect or receive any principal, interest or charge whatsoever of or for such loan.

We do not think it advisable for your Department to endorse any particular plan of authorization to purchase insurance to secure the loans for the reason that a particular plan as submitted in your letter, handled in a certain way, might be in direct violation of the "Small Loan Act" and we can really see that endorsement of a certain plan might be used as an excuse to violate this act. While it is true that any approval given by your Department would not in any way change the law, and if under a given state of facts the statutes had been violated the loan might be void and of no effect.

The "Small Loan Act" was enacted for a very salutary purpose and to correct certain evils growing out of the making of small loans.

In connection with the opinion of the Attorney-General of Illinois we have examined the statutes of Illinois, and particularly Section 54, Chapter 74, Illinois Revised Statutes, 1935, and we find a direct provision of the statute under the Small Loan Law, authorizing and empowering the department having supervision of the Small Loan Act "to make and enforce such reasonable relevant rules, regulations, directions, orders, decisions, and findings as may be necessary for the execution and enforcement of the provisions of this Act and the purposes sought to be attained herein, in addition thereto and not inconsistent therewith." And said section further provides that all such "rules, regulations, and directions, which are of a general character, shall be printed and copies mailed to all licensees." We find no such similar section in the Missouri "Small Loan Act."

It will also be noted that in the opinion of the Attorney-General of Illinois, in approving the submitted regulation, it is stated that it "would not be in conflict with the letter or spirit of the act and that it would not be unreasonable, provided care is taken and the regulation drawn in such a way as to see that there is no financial connection between the licensee and the company or person furnishing the insurance." It will be seen that in his opinion it was recognized that the submitted plan might be used in a way that would be a violation of the statute.

Conclusion.

From the above and foregoing, we are of the opinion that you should not give your approval to the plan submitted for the reason that each particular case would stand or fall on the facts in each case, and it is beyond your power and authority to issue a regulation inconsistent with the act which would be binding on the parties to the transaction. The licensee should not retain or receive any commissions from any insurance policy purchased by the customer on security pledged as collateral for a loan, and the premium cannot be deducted from the amount of the loan and must be an entirely separate transaction.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR

(Acting) Attorney General