

Opinion No. 47-5023

May 12, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. G. T. Watts District Attorney Fifth Judicial District Roswell, New Mexico

{*46} We wish to acknowledge receipt of your letter of April 30, 1947, wherein an opinion was requested covering Section 3 (a) of House Bill No. 96, enacted by the 18th Legislature.

The substance of your inquiry, for the purpose of this opinion, may be stated as follows: Where a borrower attempts to borrow money on an automobile or other similar security, and does not already have it insured, and the loan company attempts to sell insurance to such person before making the loan, although notifying such person that he may purchase this insurance elsewhere if he prefers, but still, nevertheless, refuses to loan money to such person until such property is properly insured, whether or not there would be any possibility of this procedure violating the provisions of Section 3 (a) of this Act, in connection with indirectly receiving an amount in excess of interest rates provided in the Small Loan Act, by virtue of the fact that the loan company, if it should sell the insurance, would also get the premium on such insurance in addition to the interest provided by the Act.

Section 3 (a) of said Act provides:

"Scope. No person shall engage in the business of lending in amounts of Five Hundred (\$ 500.00) dollars or less and contract for, exact, or receive, directly or indirectly on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than the maximums as elsewhere provided by the laws of the state of New Mexico, except as elsewhere provided in and authorized by this Act and without first having obtained a license from the examiner."

That security may be required of the borrower before granting a loan, may be gathered from Section 15 (a) 1. of the Act, wherein it is provided that the licensee shall at the time any loan is made under this Act, deliver to the borrower a statement in English, disclosing in clear and distinct language the terms and conditions of said loan, including among other things the **type of security**, if any, for the loan.

It does not appear unreasonable to the writer of this opinion for the loan company to require security before making a loan, and it likewise follows where a mortgage on an automobile or some similar object is offered as security, that it is not out of line if the borrower is required to carry insurance on same.

It is not unlikely for the same individual or concern to be engaged in both the small loan business and the insurance business which are separate and distinct ventures. An insurance contract is independent and apart from a small loan contract, even though the same individual { *47 } or concern may be contracting parties in both.

It is granted in the present inquiry that the potential borrower may purchase his insurance any place he chooses and merely because he purchases it from the same individual or concern that is engaged in both the insurance and small loan businesses, does not in my opinion violate Section 3 (a) of House Bill No. 96, commonly known as the Small Loan Act. The premium paid for insurance is for an entirely different service aside from interest charged on the loan.

It makes no difference whatever whether the potential borrower secures his insurance from the same individual or company where he has made application for a loan or whether he has the insurance written elsewhere. The borrower pays out the same charges in both instances. Trusting the aforementioned satisfies your inquiry, I am

By ROBT. V. WOLLARD,

Asst. Atty. General