

## **Opinion No. 61-23**

March 16, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, Assistant Attorney General

**TO:** Mr. Maurice Matthews, Acting State Bank Examiner, State Banking Department, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

May a holder of a Small Loan License issued pursuant to Sec. 48-17-30 as amended, but who also traffics in "discount paper" convert discount paper into a loan under Sec. 48-17-30, et seq., supra?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

You explain in your letter of request that by discount paper you are speaking of a type of transaction in which a debt is incurred by the purchase of tangible personal property from a retail dealer which is secured by a conditional sales contract, chattel mortgage or similar type document. This paper is then discounted to a so-called wholesale purchaser. This type of transaction probably occurs most often in connection with purchases of automobiles and home appliances.

Obligations incurred as set forth above have by law a smaller rate of interest or charge than do obligations incurred under the Small Loan Act, the reason being that the former type of obligation is normally secured by some sort of collateral by the contract or mortgage and also the Small Loan Act is designed for those people who for one reason or another cannot secure loans through traditional sources.

Your question brings into issue the construction to be placed upon Sec. 48-17-46, supra, which reads in toto as follows:

"Any licensee hereunder may make loans in accordance with and not in violation of the general laws of this state governing money and usury to any borrower not having a loan with the lender under this act, Provided no charge authorized to be made under the provisions hereof shall be made, collected or received by the lender in connection with

any such loan; **and Provided further, that any such loan shall not be converted into a loan under this act after once made or after it is reduced to a sum less than the maximum herein provided for.**" (Emphasis supplied)

A contention is made that the words of this section -- especially the last proviso -- apply only to loans made under the general usury laws of this state and do not apply to the conversions dealing with discount paper as explained above. The question resolves itself into one of whether a time sales financing agreement such as a conditional sales contract or the purchase of personal property on credit secured by a chattel mortgage is a loan within the contemplation of the general usury laws and of the above section. We reach our conclusion with great reluctance. We are bound, however, by an earlier opinion of this office and by the citations to case authority therein which indicate that by the vast weight of authority time sales transactions are not loans within the ordinary meaning of that word. Opinion of the Attorney General No. 58-184, dated September 10, 1958, examines at some length the question of whether such transactions are, in fact, loans. The author of that opinion, while expressing great reluctance at his conclusion, states that he has no choice but to follow the vast weight of authority in other jurisdictions to the effect that these transactions are not loans in the traditional sense. In view of the importance of this matter to persons dealing with Small Loan licensees who traffic in discount paper and the fact that such a practice can lead to great abuse of the public, we would readily overrule the above cited opinion if it were the only authority opposing our view. However, in view of the fact that the great weight of case authority in 50 states follows the view expressed in that opinion, we are left no alternative but to follow the theory of Stare Decisis and adhere to the above referred to opinion and the cases enunciated therein.