Opinion No. 62-146

December 19, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Keith E. Moore, State Bank Examiner, State Banking Department, Santa Fe, New Mexico

QUESTION

QUESTION

In order to charge the interest rates under the terms and conditions permitted by the Small Loan Act, is a national bank required to obtain a small loan license pursuant to Section 48-17-32, N.M.S.A., 1953 Compilation (P.S.)?

CONCLUSION

Yes.

OPINION

ANALYSIS

Accompanying your opinion request is a recent letter from the United States Deputy Comptroller of the Currency, a portion of which reads as follows:

"Section 5197 of the Revised Statutes (12 U.S.C. 85) limits the interest which a national bank may charge to 'the rate allowed by the laws of the State . . . where the bank is located . . . except that where by the laws of any State a different rate is limited for banks organized under State laws,' national banks located in that State may also charge such higher rate. In enacting R.S. 5197, Congress intended that with respect to interest charges **national banks should have the same powers as any competing State banking institution.** Therefore, national banks are empowered to charge interest at the maximum permitted by State law to competing lenders, and where, as in this case, the State law permits a higher than ordinary rate on small loans, a national bank which makes loans at such special interest rates is subject to all limitations of substance with respect to size, maturity of loan, method of payment, additional charges, and provisions for insurance." (Emphasis added)

We are in general agreement with this statement as far as it goes. However, we do not agree with this statement as far as it goes. However, we do not agree with the succeeding statement that "national banks **without being licensed by the State** and without being subject to examination by the State, may make loans on the terms

provided in a State small loan act and may charge the same rate of interest permitted lenders who become licensed under that law." (Emphasis added)

The purpose of the National Banking Act is to ensure that National Banks will be treated equally with State banks in matters such as interest rates. See **Union National Bank v. Louisville, etc., R. Co.,** 163 U.S. 325. The rule that a State can exercise no control over a national bank, or in any manner affect its operation other than as Congress may permit, excepts the bank only from such State legislation as tends to impose an undue burden on the performance of the bank's functions. **Anderson National Bank v. Luckett,** 321 U.S. 233; **Davis v. Elmira Savings Bank,** 161 U.S. 275; **State v. Clement National Bank,** Vt., 78 Atl. 944, Aff'd 231 U.S. 120.

The New Mexico Small Loan Act places **all** banks on equal footing in the matter of small loan licenses and maximum interest rates to be charged on small loans. Section 48-17-32, N.M.S.A., 1953 Compilation (P.S.) provides that no person shall make small loans at an interest rate in excess of the maximums elsewhere provided in the New Mexico statutes without first having obtained a small loan license. This Section then goes on to provide as follows:

"Any banking corporation operating **under the laws of the United States or the state of New Mexico** may elect to become a licensee for operation under the terms of this act and conform to the requirements hereof **by filing application hereunder,** but in the absence of such application **and the granting of a license thereon** no person doing business under the authority **of any law of this state or of the United States** relating to banks . . . shall be eligible to become a licensee under this act. . . ." (Emphasis added)

The above - quoted provision makes it quite clear that **any** bank which wishes to engage in the small loan business and charge the rates permitted under the Small Loan Act must apply for and receive a small loan license.

This legislation in no way curtails the performance of functions for which national banks are created. It simply confines national banks to the same rights granted to State banks insofar as small loan activities are concerned. **Berylwood Investment Co., v. Graham,** 43 Cal. App. 2d 659, 111 P. 2d 467.

It is our conclusion that a national bank that wishes to engage in the making of small loans pursuant to the Small Loan Act must make application for a small loan license, just as a state bank must do. Any other interpretation would discriminate in favor of national banks against state banks in the area of small loans made at interest rates in excess of those provided by the general usury statutes. Such a result was never contemplated nor intended by the National Banking Act. The regulation of the small loan business has always been recognized as within the police powers of the States. **Cavanaugh v. People,** 61 Colo. 292, 157 Pac. 200; **People v. Stokes,** 281 Ill. 159, 118 N.E. 87.