

## Opinion No. 68-41

April 16, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Charles L. McConnell Commissioner of Banking Department of Banking Santa Fe, New Mexico

### QUESTIONS

Section 48-21-6 A,, states in part: ". . . provided that the total of delinquency charges on any such installment **loan** shall not exceed five dollars (\$ 5.00) . . . ." Was it the intent of the law that a maximum of \$ 5.00 can be collected on one loan or on one installment?

### CONCLUSION

On one installment.

### OPINION

#### {\*72} ANALYSIS

Subsection 48-21-6 N.M.S.A., 1953 Compilation provides as follows:

"A. Delinquency charges not to exceed five cents (\$ .05) for each one dollar (\$ 1.00) of each installment more than fifteen days in arrears, Provided that the total of delinquency charges on any such installment load shall not exceed five dollars (\$ 5.00), and that only one delinquency charge shall be made on any one installment regardless of the period during which installment remains unpaid."

It is our opinion that the word "loan" contained in the proviso makes this section ambiguous and therefore subject to interpretation. This is in conformity with the law of New Mexico which requires {\*73} that a statute be ambiguous before it is open to construction. **In re Stutzman's Estate**, 57 N.M. 710, 262 P.2d 990 (1953).

We believe it is clear that the quoted section is ambiguous. All of the language except in the one noted instance, is directed to a delinquency charge for a single installment. It is our opinion that the legislative intent is clear and that that intent is to place a total delinquency charge on a single late installment and not on the total loan. Therefore, the word "loan" in the proviso should be regarded as surplusage and disregarded. See cases collected in footnote 96, 82 C.J.S. Statutes, Section 343.

By: Roy G. Hill

Deputy Attorney General