

Opinion No. 73-74

November 29, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Roy W. Davidson Commissioner of Banking Department of Banking Law
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QUESTIONS

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1. Is the use of small loan charts prepared on a 365 day basis legal under the New Mexico Small Loan Act, as amended?
2. If the answer to Question # 1 is yes, must charts used to determine charges on precomputed loans make adjustments for the fact that the number of days actually elapsed during any given loan (other than a 1, 2, or 3 year loan) will depend on the month of the year in which the loan is made?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*145} ANALYSIS

We understand that your first question is prompted by the fact that certain small loan charts prepared on a 365 day basis produce annual percentage rates higher than annual rates calculated by multiplying the monthly rates authorized in Section 48-17-43, N.M.S.A., 1953 Comp. (P.S.) by twelve. This fact has no bearing on the legality of small loan charts prepared on a 365 day basis. The maximum rates fixed by Sections 48-17-43 A and B, **supra**, are monthly and daily rates. No mention is made of maximum annual rates. So long as the monthly and daily rates used in a chart are within the statutory maximums, the chart is legal even though the charges generated by those rates may produce annual percentage rates higher than the annual rates calculated by multiplying the authorized monthly rates by twelve.

Differences between annual rates are due to the fact that charges calculated on a 365 day basis are based on twelve thirty day months at the designated monthly rates **plus 5** days at five-thirtieths of those monthly rates. See Section 48-17-43B, **supra**; Attorney General Opinion No. 67-11. This formula, which is authorized by Section 48-17-43, will

produce annual interest rates slightly greater than those produced by merely multiplying the designated monthly rates by twelve.

Your second question arises from a potential conflict between Section 48-17-43B(3), **supra**, and Section 48-17-43.1, **supra**. Section 48-17-43B(3) requires that charges "be computed on the basis of the number of days actually elapsed." This requirement was part of the original Small Loan Act, Laws 1955, Chapter 128. At that time small loans were made on an "interest bearing" basis. Charges on an "interest bearing" loan are computed each time the borrower makes a payment. The calculation is made using the outstanding balance on the loan, the applicable interest rate, and the number of days elapsed since the last payment. The interest is subtracted from the payment and the remainder of the payment is applied to the outstanding balance on the principal.

In 1959 the legislature enacted Section 48-17-43.1, **supra**. Laws 1959, Chapter 207. This section allows precomputation of charges on small loans. At the time he makes a precomputed loan, the lender computes what the charges will be if all payments are made on time. The loan and the precomputed charge are added, and each payment is deducted from their sum without segregation as to interest and principal. If the borrower repays the loan ahead of schedule, the lender must refund any portion of the interest charges which have not accrued.

The effect of the precomputation method authorized by Section 48-17-43.1 is to reduce the number of interest calculations to one. In practice small loan businesses do not even make this calculation; rather, they use precomputation charts prepared by nationally recognized financial computation companies. It is the use of these charts which creates the potential conflict between Sections 48-17-43B(3) and 48-17-43.1. Section 48-17-43B(3) requires that charges be computed on the basis of the number of days actually elapsed. The small loan charts do not do this for loans of less than one year. The charts compute charges on the basis of the fraction of the whole year which the number of months represents. For example, charges on a six month loan are computed on the basis of one-half of a 365 day loan, or 182 1/2 days. Depending on the day and the month in which a loan is made, however, the number of days **actually** elapsed might be as few as 181 or as many as 184.

A literal reading of Section 48-17-43B(3) would prohibit the use of a single set of charts for making the precomputations authorized by Section {^{*146}} 48-17-43.1. If Section 48-17-43B(3) is given a strict, literal interpretation, precomputed loans can be made only under either one of two conditions.

The individual small loan businessman could make the computations for each loan without the aid of any charts at all. A review of the mathematics involved in making precomputations convinces us that precomputation done without charts would be so difficult and time-consuming that few, if any, small loan businessmen could do the required calculations. See Neifeld's Guide to Installment Computation, Mack Publishing Co., Easton Pa., 1953. The complex mathematics would also increase the probability of errors in interest calculations, discrimination between borrowers, and fraud.

The small loan businessman could use precomputation charts provided he was supplied with sets of charts for every day of the year which would produce a different number of days actually elapsed for a loan of any given number of months. This would result in such a proliferation of charts that the ensuing confusion would produce nearly as many occasions for error and fraud as precomputations without charts.

The purpose of Section 48-17-43.1 is to obviate the necessity of multiple interest calculations on small loans. The purpose of the Small Loan Act is to provide honest and efficient small loan service and to eliminate abuse of borrowers. Section 48-17-30, **supra**. Both of these purposes are clearly frustrated if Section 48-17-43B(3) is strictly interpreted so as to allow precomputation only under the conditions set forth in the preceding paragraphs. It is axiomatic, however, that courts will not give a strict, literal interpretation to a statute if such an interpretation will defeat the statute's purpose. **Montoy a v. McManus**, 68 N.M. 381, 362 P.2d 771 (1967). Courts will construe all the provisions of an act together so that each provision may be considered in relation to every other part and the legislative purpose gleaned from a consideration of the whole act. **Winston v. New Mexico State Police Board**, 80 N.M. 310, 454 P.2d 967 (1969). It is also well settled that statutes will be construed to reach a reasonable result and avoid undue hardship. **McDonald v. Lambert**, 43 N.M. 27, 85 P.2d 78 (1938).

These principles of statutory construction lead us to reject a strict construction of Section 48-17-43B(3) in favor of the following interpretation. When Section 48-17-43B(3) was enacted, interest-bearing loans were all that the New Mexico legislature contemplated. The requirement that charges be computed on the basis of the number of days actually elapsed expressed a legislative purpose to strictly regulate interest charges on that type of loan. That requirement is not applicable to precomputed loans, however; it frustrates the purpose of Section 48-17-43.1 by effectively prohibiting the use of the standard charts so essential to the accomplishment of that section's purpose. Section 48-17-43B(3) applies only to loans made on an interest-bearing basis. It does not apply to loans made on a precomputed basis pursuant to Section 48-17-43.1. Section 48-17-43B(3) does not prohibit the use of standard, small loan precomputation charts unadjusted for the number of days actually elapsed during any given loan.

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