

Opinion No. 88-29

May 3, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Scott D. Spencer, Assistant Attorney General

TO: Ms. Marce Saykally, Chief, Consumer Credit Bureau, Financial Institutions Division, Regulation & Licensing Department, Bataan Memorial Building, Santa Fe, New Mexico 87503

QUESTIONS

(1) May Financial Institutions Division ("FID") tax, at renewal time, small loan licensee renewal fees under the provisions of Sections 58-7-1 et seq. NMSA 1978 and 56-8-1 et seq. NMSA 1978, in addition to Section 58-15-5(G) NMSA 1978 (1987 Supp.)?

(2) Is FID required to audit loans made by small loan licensees pursuant to the Installment Loan Act?

CONCLUSIONS

(1) No.

(2) Yes.

ANALYSIS

The New Mexico Small Loan Act of 1955 ("Small Loan Act"), Sections 58-15-1 to 58-15-31 NMSA 1978, regulates loans of \$2,500 or less. Section 58-15-21. Pursuant to Section 58-15-3, a person covered by the Small Loan Act generally may not lend \$2,500 or less without obtaining a license from the Financial Institutions Division ("FID"). Subsection 58-15-5G provides:

At the time of issuance of original license and each annual renewal thereof, the licensee for each licensed office shall pay to the director as a license fee for the period covered by the license the sum of five hundred dollars (\$500) as a minimum, plus an additional seventy-five cents (\$.75) for each one thousand dollars (\$1,000) or fraction thereof of loans outstanding as of December 31 next preceding, as shown on the applicant's annual report.

The New Mexico Installment Loan Act of 1959 ("Installment Loan Act"), Sections 58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978, regulates loans that are repayable in installments or made under a credit card plan. Section 58-7-3. Pursuant to Section 58-7-9B, however, the Installment Loan Act's provisions generally do not apply to loans made

in accordance with Sections 56-8-9 to 56-8-14 of New Mexico's usury statutes, Sections 56-8-1 to 56-8-21 NMSA 1978. The Installment Loan Act applies to licensees under the Small Loan Act. Section 58-7-2. Conversely, the Small Loan Act allows a licensee to make loans in any amount in accordance with the Installment Loan Act. Section 58-15-3A.

No provision of the Installment Loan Act, or the usury statutes, authorizes FID to charge a fee based upon the amount of loans made pursuant to those sections that is similar to the authorization contained in Section 58-15-5G NMSA 1978. Therefore the issue is whether the Small Loan Act authorizes FID to charge a fee that includes \$.75 for each \$1,000 of loans arising under the Installment Loan Act in addition to those made under the Small Loan Act. Section 58-15-5G establishes a fee based on "loans outstanding as of December 31 next preceding." In statutory construction all parts of an act relating to the same subject matter are to be construed together. *Kendrick v. Gackle Drilling Co.*, 71 N.M. 113, 117, 376 P.2d 176, 178 (1962). All of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent. *Allen v. McClellan*, 75 N.M. 400, 402, 405 P.2d 405, 406 (1965). Section 58-15-21 states that, for the purposes of the Small Loan Act, a "loan" is the "payment of two thousand five hundred dollars (\$2,500) or less in money, credit, goods or things in action." When these principles and this definition of "loans" is applied to Section 58-15-5(G), the \$.75 fee properly is applied only to loans of \$2,500 or less, i.e., "small loans."

Generally, a state agency has no authority to levy fees unless a law specifically authorizes it to do so. *Att'y Gen. Op. 68-90* (1968); *Att'y. Gen. Op. 66-44* (1966); *Att'y Gen. Op. 61-128* (1961). A state agency cannot exceed the powers that the legislature confers upon the agency. *In re Proposed Revocation of Food and Drink Purveyor's Permit for House of Pancakes*, 102 N.M. 63, 66, 691 P.2d 64, 67 (Ct. App. 1984). It is therefore our opinion that FID may not charge a fee based upon loans made pursuant to the Installment Loan Act.

This opinion raises the related question of whether FID is required to audit loans made by small loan licensees pursuant to the Installment Loan Act. Subsection 58-15-9A states, in part:

At least once each year, the director or his duly authorized representative shall make an examination of the place of business of each licensee and such of the loans, transactions, books, papers and records of the licensee insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955 [Chapter 58, Article 15 NMSA 1978] as he may deem necessary. The licensee shall pay to the commissioner for such annual examination a fee of two hundred dollars (\$200).

(Emphasis added.) This statute unequivocally states that at least once a year the director shall examine "loans, transactions, books, papers and records" of licensees insofar as they "pertain to the business" licensed under the Small Loan Act. According to subsection 58-15-2C, "licensee" refers to one who is licensed under the Small Loan Act. "Pertain" means "to belong" or "to relate." *Church of the Holy Faith v. State Tax*

Comm'n, 39 N.M. 403, 407, 48 P.2d 777, 779 (1935). As explained above, a small loan licensee may make loans under the Installment Loan Act by virtue of its small loan license. When it does so, it is making a loan that "pertains" to the business licensed under the Small Loan Act. As explained above, a small loan licensee may make loans under the Installment Loan Act by virtue of its small loan license. The "business" licensed under the Small Loan Act therefore may include loans made under the Installment Loan Act. It is therefore our opinion that FID must examine all loans that "pertain" to a licensee's status as a "small loan licensee." FID must examine installment loans made by small loan licensees even though it does not include them in the calculation of the license fee.

ATTORNEY GENERAL

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