Opinion No. 13-1070

July 5, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Howell Earnest, Traveling Auditor, Santa Fe, N. M.

BUILDING AND LOAN ASSOCIATIONS.

Building and loan associations limited to 12% per annum on money loaned.

OPINION

*{*242}* I have before me, by reference from your office, a letter from J. B. Cole, President of the Cimarron Building & Loan Association, in which he asks for your opinion as to the effect of Section 2 of Chapter 55 of the Laws of 1913, which provides, referring to building and loan associations, that "the total sum received by any such association as premiums, fines and interest shall not exceed twelve per centum per annum of the money actually borrowed." Mr. Cole says that, as he understands the law, building and loan associations throughout the state will not be able to assess fines for unpaid dues and interest from borrower in case the original loan is made at twelve per cent, and also that he believes that all such associations in the state have loaned their money at twelve per cent, and that in such cases the associations will not be able to assess fines against borrowers who refuse to pay their dues and interest promptly.

I believe that Mr. Cole's understanding of the effect of the law is correct, and that it is plain that the legislative intent was to limit such associations to twelve per cent per annum as a rate for money loaned, thus putting them on an equality with other lenders of money, as indicated in Sections 2553 and 2554 of the Compiled Laws of 1897.

I believe that Mr. Cole must be in error in his statement that these associations throughout the state have generally loaned their money at twelve per cent. I have been informed that their nominal rate of interest has been from seven per cent to eight per cent, but by mans of premiums and fines the borrowers have been actually compelled to pay something like fifteen per cent. However that may be, I am quite clear that the intent of the legislature was, after the act referred to should go into effect, which was on January 13, 1913, borrowers from these associations must not be required to pay more than twelve per cent on the amount of money borrowed, no matter whether the payment is called a premium, fine or interest.

This must not, however, be construed as invalidating contracts previously made. To give the statute any such effect would be in violation of that clause of Section 10, Article 1 of the Constitution *{*243}* of the United States, which provides that no state shall pass any law impairing the obligation of contracts.

I return Mr. Cole's letter herewith.