

Opinion No. [30-110]

March 5, 1930

TO: Office of the Attorney General of New Mexico

USURY -- Interest in excess of 12% per annum usurious.

OPINION

Referring to recent conversations concerning Tucson Industrial Finance Corporation and its application to do business in this state under whatever name may be agreed upon, which matter you discussed with Mr. Warfel and myself and left for our consideration you are advised as follows:

We, yesterday, had an extended discussion of every phase of this matter with Mr. Tierney and Mr. Beagle, directors and organizers of the proposed company in this State, and after due consideration of their representations and those of their attorney, and a study of the forms proposed to be used, we have reached the following conclusions:

First, **As To The Rate of Interest This Plan Contemplates.**

As we in our discussions used the figures applicable to a loan of \$ 100.00 as a concrete example, I shall use the same figures here. The plan contemplates that the borrower, in order to get a loan of \$ 100.00, signs two notes for \$ 112.10 each and also an application for a loan. We may at this time disregard his subscription for a 4% "investment certificate." In order to get at the rate of interest actually paid by the borrower we may confine ourselves to the fact that he actually borrows \$ 100.00, agrees to and does pay back \$ 10.00 a month, beginning one month after date of loan, and that he pays as interest for this, allowing for a rebate of \$ 2.42 and \$ 1.00 for a so-called insurance, the net sum of \$ 8.79. From this then we get the following result: The borrower has the use of:

\$ 100 for one month
90 for one month
80 for one month
70 for one month
60 for one month
50 for one month
40 for one month
30 for one month
20 for one month
10 for one month

Equivalent to \$ 550 for ___ one month or 1/12 of that amount for twelve months, which equals \$ 45.83 1/3 for 12 months and for which he pays as interest \$ 8.79, which equals 19 (plus) per cent per annum, or which may be figured otherwise. That is, having agreed to pay back 1/10 of the principal each month he has the use of:

\$ 10 for 1 mo.
10 for 2 mo.
10 for 3 mo.
10 for 4 mo.
10 for 5 mo.
10 for 6 mo.
10 for 7 mo.
10 for 8 mo.
10 for 9 mo.
10 for 10 mo.

Being equal to \$ 10 for ___ 55 months or \$ 100.00 for 5.5 months and for which he pays as interest the sum of \$ 8.79 or 19.17% per annum.

Section 89-109, Compilation of 1929 reads as follows:

"Interest -- Ten per centum. Any rate of interest not exceeding ten per centum per annum agreed to by the parties to the contract, shall be legal, and no person shall directly or indirectly take or receive any money, goods or things in action or in any other way, any greater interest, sum or value for the loan or forbearance of any money, goods or things in action than ten per centum per annum; Provided that a minimum charge of one dollar (\$ 1.00) may be made for interest where the rate fails to aggregate said sum."

It is noted that "no person shall **directly** or **indirectly** take or receive . . . any greater interest sum or value for the loan or forbearance of any money, goods, or things in action than 10% per annum . . ." and section 89-106, 1929 Compilation provides that any person, persons, or corporation who shall hereafter charge, collect, or receive from any person a higher rate of interest than 12% per annum shall be deemed guilty of a misdemeanor and subject to a fine.

Section 89-106, as to its civil provisions, has been superceded by section 89-109-112 but not as to its criminal provisions. Armijo, ex parte, 32 N.M. 458.

From the foregoing you will see that we find the plan proposed by this company to be usurious in that it contemplates and results in a collection of interest in excess of 12% per annum.

I may observe that with reference to the so-called insurance fee which is included in the note given by the borrower I do not consider this as insurance but rather a payment in consideration of which the lender stipulates in the note that the obligation of the borrower and his sureties shall continue only so long as the borrower lives. In the event

of his death, his estate and his sureties are released from any obligation to pay any balance which then may remain unpaid. We also have deducted the \$ 2.42 which is rebate to the borrower as interest on the payments he makes on the investment certificate.

As to whether or not this institution is a bank and therefore subject to the banking laws of the state, or whether there are features which might influence you in passing upon its application under the Blue Sky Law, we do not deem it necessary to express an opinion at this time. Being so firmly convinced that the plan submitted contemplates a collection of usurious interest we cannot approve the application and will suggest to you that you refuse recognition.

A carbon copy of this letter, together with all blanks submitted by the applicants, we are sending to Mr. Harry Bowman, attorney for the applicants.