

**Opinion No. [30-112]**

July 29, 1930

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Mr. Fred McElheney, 306 South Mesa, Albuquerque, New Mexico.

USURY -- § 89-106, Code 1929.

**OPINION**

I have yours of the 28th inst. in which you ask for information as to the legal rate of interest in New Mexico.

This subject is dealt with by chapter 89 of the Compilation of 1929, section 89-106 of that Compilation is as follows:

**"Usury -- Limitation of action.** Any person, persons or corporation who shall hereafter charge, collect or receive from any person a higher rate of interest than twelve per cent. per annum, shall be guilty of a misdemeanor, and upon conviction thereof before the district court or a justice of the peace, shall be fined in a sum of not less than twenty-five dollars, nor more than one hundred dollars; and such person, persons or corporation shall forfeit to the person of whom such interest was collected or received, or to his executors, administrators or assigns, double the amount so collected or received upon any action brought for the recovery of the same within three years after such cause of action accrued."

The provisions of the section just quoted apply as well when a rate of interest higher than twelve per cent. **per annum** results from any discount, commission, agency, monthly payment, or other subterfuge.

Twelve per cent, per annum is allowed only on unsecured contracts. Where a note is secured by collateral security the rate allowed is not to exceed ten per cent per annum.

Where repayment of a loan is effected through monthly payments, which along with other so-called insurance, discounts, or commissions results in a rate of interest or money paid for the loan higher than twelve per cent per annum, the contract is usurious and the lender, whether he act as agent or principal, is liable to punishment. When the same person acts as agent for the borrower and lender he is deemed the agent of the lender for the purpose of this act.