

## Opinion No. 45-4824

December 11, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Woodlan P. Saunders State Bank Examiner Santa Fe, New Mexico

{\*162} In your letter dated November 29, 1945, you enclose a copy of your administrative interpretations relative to the Small Loan Act, and, in particular, to Section 50-1611 of the N.M. 1941 Compilation. You state that it is your position that when the Legislature provided that only three per centum per month should be charged upon the renewal or extension of loans, that you believe only three per centum per month could be charged upon the unpaid balance of the note, when written into a new note, and that the licensee could charge the service fee only upon the additional money advanced. This interpretation is set forth in Paragraph 6 of the Administrative Interpretations. You particularly inquire whether the making of a new note would be considered a new loan, when only a very small portion of the amount constituted an additional advance of money.

Section 50-1611 of the N.M. 1941 Compilation provides first that upon loans not exceeding \$ 300.00, a person licensed under the act may charge and receive interest at the rate of ten per centum per annum, and a service fee of not more than one-tenth of the amount actually loaned. Upon secured loans, an additional charge or fee is authorized. Following these provisions appears this language:

"The service fee hereinbefore referred to shall not impose upon the same borrower for any new or additional loan, or for any extension of the original loan, or any renewal thereof in whole or in part, more than two (2) times during any calendar year."

Immediately following this language, the remainder of the paragraph deals with unsecured loans of \$ 50.00 or less. For that reason it may be assumed that the Legislature intended the first part of the paragraph to cover all secured loans up to \$ 300.00, and unsecured loans in excess of \$ 50.00, and less than \$ 300.00. The remainder of the paragraph, dealing with unsecured loans of \$ 50.00 or less, provides as follows:

"Upon unsecured loans of fifty dollars (\$ 50.00) or less, the {\*163} licensee hereunder may charge and receive therefor one-tenth (1/10) of the amount thereof, which loan may be repayable in installments as may be agreed upon between the parties, and the final installment due not more than sixty-one (61) days after date, and one-fifth (1/5) thereof for any such loan repayable in installments as may be agreed upon between the parties when the final installment thereon is due more than sixty-one (61) days after the date thereof. Provided, however, that no greater rate of interest or charge than three per centum (3%) per month shall be made, contracted for or received upon the renewal or extension of any loan made under the provisions of this act."

It is noted that the last sentence, pertaining to three per centum per month refers only to renewal or extension of any loan, and does not refer to any new or additional loan, as is done in the preceding portion of the section, pertaining to other types of loans, and to loans in excess of \$ 50.00.

The meaning of extension of a loan is clear to be that the maturity date is postponed on a given obligation. The meaning of renewal is stated by the Courts to be the reestablishment of the particular contract for another period of time. A contract for a greater sum than that contained in the original note, or unpaid balance in the original note, is not a renewal in the accepted sense of the word, but is a new obligation, under which the original obligation ordinarily is discharged. *Elisberg v. Simpson*, 173 N. Y. S. 128; *Lowry National Bank v. Pickett*, 122 Ga. 489, 50 S. E. 396; *Sponhour v. Malley*, 27 Ind. App. 287, 52 N. E.

It is noted that if the final installment on a loan of \$ 50.00 or less is due not more than 61 days after date, a fee of one-tenth of the amount thereof may be charged, and if the final installment is due more than 61 days after the date, the fee which may be charged is one-fifth of the amount of the loan.

If a new obligation and a new contract is made, the maturity dates on the note would have to be in conformity with these requirements in order to charge the different amounts, as provided.

From the foregoing, it is apparent that your interpretation, as set forth in Paragraph 6, is not altogether correct, and if a greater amount is concerned in the new note than was due under the old obligation, the new note does not constitute a renewal of the old obligation, but would be an entirely new contract, perhaps discharging the old obligation.