



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 79- 286

Robert Elliott
Consumer Credit Commissioner
535 Kansas Avenue
Topeka, Kansas 66612

Re: Consumer Credit Code--Finance Charge for
Consumer Loans--Supervised Lenders

Synopsis: An out-of-state lender who is subject to the Kansas Uniform Consumer Credit Code by virtue of having solicited loans through the mails to Kansas residents may not make consumer loans in which the rate of the finance charge exceeds 12%, unless the lender is either licensed pursuant to K.S.A. 16a-2-301 et seq., or is a supervised financial organization, as defined by K.S.A. 16a-1-301(38).

* * *

Dear Mr. Elliott:

We are in receipt of a request from your office on the following question: What interest rate may an out-of-state lender (who makes loans pursuant to mail solicitations received in this state) charge on consumer loans to Kansas residents?

As you are doubtless aware, the making of consumer loans in Kansas is governed by the Kansas Uniform Consumer Credit Code, which appears at K.S.A. 16a-1-101 et seq. The jurisdictional reach of the Code is established by K.S.A. 1978 Supp. 16a-1-201, which extends the application of the various provisions therein to a number of transactions which do not fully take place in this state. One such transaction covered by subsection (10) of the

statute is the type of loan described in the opinion request, i.e., a resident of this state receives a mail solicitation from out of state, and then sends a signed writing accepting the obligation back to the lender, again through the mail. The loan proceeds are then received by the consumer in this state.

It is clear that such transactions, along with the lender involved therein, are included under the terms of the Code, including the provisions which establish the maximum finance charges allowed on consumer loans. K.S.A. 1978 Supp. 16a-1-201(10)(a). The question then remaining concerns the various classes of lenders recognized by the Code, and the maximum rates allowed on the loans made by each. Maximum rates for consumer loans are established by K.S.A. 1978 Supp. 16a-2-401. That statute draws a distinction between consumer loans which are made by so-called "licensed lenders" and those which are not. The former are allowed by subsection (2) of the statute to establish either: a three-level system of charges, depending on the amount of the loans; or a flat rate of 18% which may be used whatever the amount. Non-licensed lenders are limited by subsection (1) to rates of 18% (on amounts of \$1,000 or less) and 14.45% (on amounts greater than \$1,000). The procedures for the grant of a license are set out at K.S.A. 16a-2-301 et seq., and need not be discussed in detail here. We do note, however, that there appears to be no requirement that a lender be located in this state in order to obtain a license, leaving this option available to even the "mail order" type of lender discussed earlier.

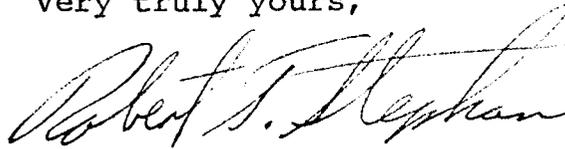
However, if such a license is not obtained, the use of the 18/14.45 percentage rates is not automatic. A closer examination of the Code indicates that an additional distinction is drawn between "supervised" and "non-supervised" lenders. A "supervised lender" is defined by K.S.A. 16a-1-301(39) as including licensed lenders of the kind mentioned above, and "supervised financial organizations." These latter entities are further defined as those persons or organizations which are organized or chartered under the laws of this state or of the United States to make loans and receive deposits (e.g., banks, savings and loan companies and credit unions). K.S.A. 16a-1-301(38). We note that the rate allowed to such entities is that set by K.S.A. 1978 Supp. 16a-2-401(1), which deals with non-licensed lenders, although there is no reason why supervised financial organizations cannot obtain licenses and so come under the highest rate limits set by (2). Either way, they remain "supervised" lenders.

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This distinction is important, for under K.S.A. 16a-2-301, only "supervised lenders" may make "supervised loans," which are in turn defined as any consumer loan with a finance charge in excess of 12%. K.S.A. 16a-1-301(40). Therefore, if a lender subject to the Code, whether in-state or out-of-state, is not a supervised financial organization, its alternatives are limited to one of two choices. Either it may be licensed, and so receive the full benefits of K.S.A. 1978 Supp. 16a-2-401(2), or it may only charge the 12% rate which K.S.A. 16a-1-301(40) establishes as the maximum for non-supervised loans. The fact that the loans are made by mail is immaterial.

In conclusion, an out-of-state lender who is subject to the Kansas Uniform Consumer Credit Code by virtue of having solicited loans through the mails to Kansas residents may not make consumer loans in which the rate of the finance charge exceeds 12%, unless the lender is either licensed pursuant to K.S.A. 16a-2-301 et seq., or is a supervised financial organization, as defined by K.S.A. 16a-1-301(38).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:BJS:JSS:gk