



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81-200

Roy P. Britton
State Bank Commissioner
Suite 600
818 Kansas Avenue
Topeka, Kansas 66612

Re: Contracts and Promises -- Interest and Charges --
Business and Agricultural Loans

Synopsis: The conclusion reached in Attorney General Opinion No. 81-158, that a state's interest rate limitations on business and agricultural loans of \$1,000 or more have been preempted by federal legislation, is affirmed. However, because such preemption is operative only if the federally-prescribed interest rate limitation exceeds a state's limitation, such preemptive interest rate is not applicable in Kansas, since Kansas statutes no longer impose any interest rate limitations on business and agricultural loans. Cited herein: K.S.A. 1980 Supp. 16-207 (as amended by L. 1981, ch. 88, §1), 16a-1-301 (as amended by L. 1981, ch. 93, §5), 12 U.S.C.A. §86a, P.L. 96-221, §521, P.L. 96-399, §324.

* * *

Dear Mr. Britton:

You have requested clarification of our earlier opinion to you (Attorney General Opinion No. 81-158) with respect to certain provisions of 1981 Senate Bill No. 83.

In the prior opinion, we concluded that, by virtue of section 521 of P.L. 96-221, the Depository Institutions Deregulatory and Monetary Control Act of 1980, the "most favored lender" status had been accorded to state-chartered, federally-insured banks. In addition, we found that a state's interest rate

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limitations on business and agricultural loans of \$1,000 or more have been preempted by federal legislation, and such rates are now prescribed by section 324 of P.L. 96-399. It is regarding this latter conclusion that you now seek our opinion.

Section 1 of 1981 Senate Bill No. 83 amends K.S.A. 1980 Supp. 16-207 (L. 1981, ch. 88, §1), and the provisions thereof that are pertinent to your inquiry are found in subsections (a), (b) and (e) of the amended section. Subsection (a) imposes the general usury limitation of 10% on the rate of interest stipulated by the "parties to any bond, bill, promissory note or other instrument of writing for the payment or forbearance of money." By the terms of this subsection, such limitation is applicable unless a different rate of interest is "otherwise specifically authorized by law." No substantive amendment was made to these provisions in 1981.

Subsection (b) of 16-207, as amended, is one such instance where a different rate of interest is specifically authorized. It provides for a fluctuating rate of interest "for notes secured by all real estate mortgages and contracts for deed to real estate" executed on or after February 25, 1980. (See L. 1980, ch. 75, §§1,6.) Although this subsection was amended in 1981, the amendments did not alter the basic purpose of this subsection and are not pertinent here.

Subsection (e) in its entirety, however, was added to this statute pursuant to the amendments effected by Senate Bill No. 83. This subsection provides:

"(e) The interest rates prescribed in subsections (a) and (b) of this section shall not apply to a business or agricultural loan. For the purpose of this section unless a loan is made primarily for personal, family or household purposes, the loan shall be considered a business or agricultural loan. For the purpose of this subsection, a business or agricultural loan shall include credit sales and notes secured by contracts for deed to real estate." (Emphasis added.)

Thus, as of July 1, 1981 (the effective date of Senate Bill No. 83) the interest rate limitations prescribed in subsections (a) and (b) of K.S.A. 1980 Supp. 16-207, as amended, are no longer applicable to business and agricultural loans. Moreover, as a result of 1981 legislation, there are no other Kansas statutory provisions which limit the rate of interest on these types of loans.

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Prior to July 1, 1981, certain loans and credit transactions for agricultural purposes were subject to the pertinent rates prescribed in the Uniform Consumer Credit Code (UCCC), but the enactment of 1981 House Bill No. 2167 (L. 1981, ch. 93), effective July 1, has removed such limitations. K.S.A. 1980 Supp. 16a-1-301, which contains definitions applicable in the UCCC, previously defined "consumer credit sale," "consumer lease" and "consumer loan" as being "primarily for a personal, family, household, or agricultural purpose." However, the definition of each of these terms has been modified in section 5 of House Bill No. 2167, so as to remove "agricultural purpose" from its purview, and this section also amended 16a-1-301 by deleting the definition of "agricultural purpose."

Thus, for purposes of the UCCC, a consumer credit transaction (i.e., consumer credit sale, consumer lease or consumer loan) no longer includes a transaction for an agricultural purpose. Accordingly, the interest rates specified in the UCCC are no longer applicable to such transactions.

Therefore, as a consequence of 1981 Senate Bill No. 83 and House Bill No. 2167, effective July 1, 1981, there are no limitations in Kansas statutes on the amount of interest which may be agreed to in business or agricultural loans. Thus, the question arises as to whether such rates are limited by federal law.

The conclusion we reached in Opinion No. 81-158, that a state's interest rate limits on business and agricultural loans of \$1,000 or more had been preempted by federal law, was predicated on the provisions of section 324 of P.L. 96-399 (12 U.S.C.A. §86a), which provides in pertinent part as follows:

"(a) If the applicable rate prescribed in this section exceeds the rate a person would be permitted to charge in the absence of this section, such person may in the case of a business or agricultural loan in the amount of \$1,000 or more, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate, including any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the person is located."

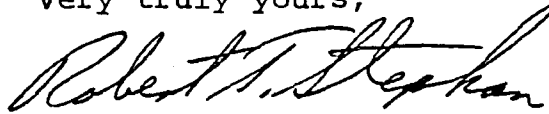
From the foregoing, it is apparent that the federal preemption of a state's constitutional or statutory interest rate

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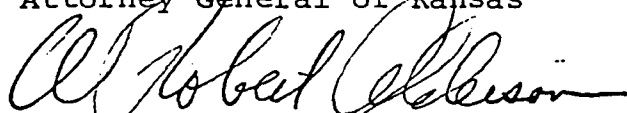
limitations, with respect to business and agricultural loans, is operative only if the interest rate authorized in the above-quoted section exceeds the rate permitted under state law. Thus, since there are no longer any limitations in Kansas statutes on the amount of interest which may be charged on business and agricultural loans, the interest rate authorized by 12 U.S.C.A. §86a(a) can never exceed the rate permitted under Kansas law. Consequently, the preemptive interest rate prescribed by that statute is not applicable in Kansas.

Therefore, while we affirm the conclusion reached in Attorney General Opinion No. 81-158, we note that the federal preemption of interest rate limits on business and agricultural loans is of no practical effect in Kansas.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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