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July 9, 1982

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ATTORNEY GENERAL OPINION NO. 82- 153

The Honorable Elwaine F. Pomeroy
State Senator, Eighteenth District
1415 Topeka Avenue
Topeka, Kansas 66612

Re: Consumer Credit Code -- Consumer Loans -- Finance
Charge; Effect of Amendments Passed in Same
Legislative Session

Synopsis: During the 1982 session of the Legislature, both
Senate Bill Nos. 559 and 595 were enacted into
law. As each of the two measures contains a section
amending K.S.A. 16a-2-401, they should, if possible,
be considered together in order to give effect to
both. In that they alter different subsections
of the statute, the two measures are not in con-
flict. Even though the changes made by S.B. No.
595 are not reflected in S.B. No. 559, K.S.A.
16a-2-401 may be read to include the changes made
by both acts. Cited herein: K.S.A. 16a-2-201,
16a-2-401, 1982 Senate Bill No. 559, 1982 Senate
Bill No. 595.

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Dear Senator Pomeroy:

You request the opinion of this office on a question which
concerns the effect to be given to two measures which were
enacted by the 1982 Legislature. Both of the bills originated
in the Senate, and were designated as Nos. 559 and 595, respec-
tively. In that the two bills were both approved by the
legislature and signed by the governor, you inquire concern-
ing the effect of an inconsistency between the two regarding
K.S.A. 16a-2-401.

Found in the Kansas Consumer Credit Code, K.S.A. 16a-2-401 contains a number of provisions regarding consumer loans made by supervised lenders. Of relevance here are the following subsections (as they read prior to the 1982 Legislative Session):

"(1) With respect to a consumer loan, including a loan pursuant to open end credit, a lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding 18% per year on the unpaid balance of the amount financed not exceeding \$1,000 and 14.45% per year on that portion of the unpaid balance in excess of \$1,000.

"(2) As an alternative to the rates set forth in subsection (1), with respect to a supervised loan made under a license issued by the administrator, including a loan pursuant to open end credit, a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

"The total of (a) 36% per year on that part of the unpaid balance of the amount financed which is \$300 or less; and

"(b) twenty-one percent per year on that part of the unpaid balance of the amount financed which is more than \$300, but does not exceed \$1,000; and

"(c) fourteen and forty-five hundredths percent per year on that portion of the unpaid balance of the amount financed which is more than \$1,000; or

"(d) eighteen percent per year on the unpaid balance of the amount financed.

. . . .

"(8) As an alternative to the rates set forth in subsection (1) and subsection (2)(d), during the period beginning on the effective date of this act and ending July 1, 1982, a super-

vised financial organization may contract for and receive a finance charge not exceeding 18% per year on the unpaid balance of the amount financed."

We note that the last subsection quoted hereinabove was added to the statute in 1980 (Ch. 77, §3), and originally contained an expiration date of July 1, 1981. During the 1981 session, the subsection was further amended to extend the date to July 1, 1982. (Ch. 94, §3).

During the most recent session, K.S.A. 16a-2-401 was amended by two different senate bills. The first, No. 559, enrolled and presented to Governor Carlin on April 1, 1982, was to become effective upon publication in the statute book. In its final form, it bore no resemblance to the measure originally introduced by the Senate Commercial and Financial Institutions Committee. Although initially dealing solely with K.S.A. 16a-2-202, which relates to consumer sales, the bill was altered in the House to amend only K.S.A. 16a-2-401, relating to consumer loans. The "over-ride" provision contained in subsection (8) was not affected in any way by the language which was eventually approved. Rather, a new subsection was inserted which authorized adjustable rate loans, an area upon which the Code had hitherto been silent.

The other bill which amended K.S.A. 16a-2-401, S.B. No. 595, was also introduced by the Senate Commercial and Financial Institutions Committee, was enrolled and presented to the governor on April 30, 1982, and was to become effective upon publication in the statute book. This measure contains no reference to the additional language of Senate Bill No. 559, which had been signed into law by the date of enrollment of the former bill. However, it does contain changes to the over-ride language of subsection (8), in that the date upon which the subsection lapses is changed from July 1, 1982 to July 1, 1983. Additionally, a supervised lender is allowed to charge 21%, rather than 18%, as an alternative to the rates set forth earlier in the statute.

In determining the effect to be given to these two bills, we are guided by a frequently-stated rule of statutory construction, namely that

"[l]aws enacted by the same legislature about the same time and concerning the same subject-matter, being in pari materia, are to be taken and considered together in order to determine the legislative purpose and arrive at the true result." In re Hall, Petitioner, 38 Kan. 670, Syl. 1, (1888).

See also State ex rel. v. McCombs, 125 Kan. 92 (1928), Millhaubt v. McKee, 141 Kan. 181 (1935). In the Hall case, it was established that two measures enacted at the same time which are apparently in conflict must be read together and, whenever possible, reconciled to form a consistent whole. Insofar as repeals by implication are not favored by the law, only when this is impossible should other rules of statutory construction be employed to determine which act takes precedence. Millhaubt, supra, at 183, 184.

In the McCombs case, the court was faced with a situation where two acts of the legislative session of 1907 were in apparent conflict. Although the court did determine that portions of one act were superseded by the other, it reached this conclusion reluctantly, and only after first quoting from an earlier decision:

"Where a conflict exists between a later and an earlier act of the legislature, and where the later act does not attempt to cover all the provisions of the earlier act, both acts ordinarily remain in force except on the point where the acts are in conflict, in which respect the later act supersedes, repeals or modifies the inconsistent terms of the earlier enactment. (Bank v. Reilly, 97 Kan. 817 [Opinion on Rehearing, p. 827, syl. ¶3], 157 Pac. 391.)"

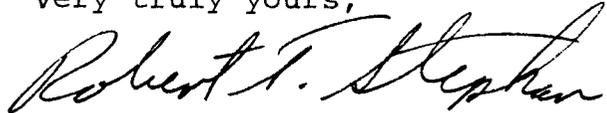
In our opinion, in the present situation it is unnecessary to find that one of the two measures must be superseded by the other. We base this conclusion on the above-quoted rules of statutory construction, as well as the particular facts here. While both Senate Bill Nos. 559 and 595 amend the same statute, they do not alter identical provisions, as the former adds a totally new subsection and the latter alters an existing subsection left unchanged by No. 559. There is no point upon which the acts are directly in opposition, as would be the case if both set new, but different, interest rates in subsection (8). Therefore, as the two measures are not "in conflict" as to any particular "point," both may be given force and effect.

In conclusion, during the 1982 session of the Legislature, both Senate Bill Nos. 559 and 595 were enacted into law. As each of the two measures contains a section amending K.S.A.

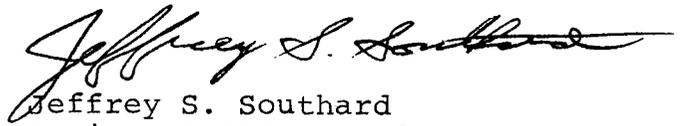
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16a-2-401, they should, if possible, be considered together in order to give effect to both. In that they alter different subsections of the statute, the two measures are not in conflict. Even though the changes made by S.B. No. 595 are not reflected in S.B. No. 559, K.S.A. 16a-2-401 may be read to include the changes made by both acts.

Very truly yours,



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