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ATTORNEY GENERAL OPINION NO. 82- 204

Marvin S. Steinert
Savings and Loan Commissioner
Suite 220, 503 Kansas Avenue
Topeka, Kansas 66603

John A. O'Leary, Jr.
Bank Commissioner
Suite 600, 818 Kansas Avenue
Topeka, Kansas 66612

Re: Consumer Credit Code -- Consumer Loans -- Finance Charge; Exemption of Adjustable Rate Loans From Maximum Finance Charge Limits

Synopsis: Pursuant to K.S.A. 16a-2-401 (as amended by 1982 Senate Bill No. 559), a supervised lender may make loans in which the rate of interest may be periodically adjusted where any such loan is secured by an interest in land subordinate to a prior mortgage held by a lender other than the supervised lender. Section 2 of the bill, which authorizes the promulgation of rules and regulations governing such adjustable rate loans, also applies to loans made pursuant to K.S.A. 16-207(h) (as amended by 1982 Senate Bill No. 539) which are secured by a real estate mortgage. 1982 Senate Bill No. 559 does not contain more than one subject matter so as to violate Article 2, Section 16 of the Kansas Constitution, nor is section 2 of the bill an unlawful delegation of power by the legislature. Cited herein: K.S.A. 16-207 (as amended by L. 1982, ch. 89), K.S.A. 16a-2-204 (as amended by L. 1982, ch. 94), Kansas Constitution, Article 2, §§1, 16.

* * *

Dear Commissioners Steinert and O'Leary:

As Savings and Loan Commissioner and Bank Commissioner, respectively, you request our opinion on several questions regarding 1982 Senate Bill No. 559, which now appears in the session laws at chapter 94. This bill amends K.S.A. 16a-204 so as to authorize adjustable rate loans to be made regardless of the finance charge limits contained in the statute. As noted in a prior opinion of this office (No. 82-128), while K.S.A. 16-207(h) (as amended by 1982 Senate Bill No. 539, now at L. 1982, ch. 89), authorizes such loans to be made where secured by a real estate mortgage, the amendment to K.S.A. 16a-2-401 allows adjustable rates to be used in realty loans which are otherwise covered by the Uniform Consumer Credit Code.

As we read your request, you inquire concerning three points. The first of these concerns the constitutionality of 1982 Senate Bill No. 559. Specifically, you question whether the bill as enacted contains more than one subject matter. If such is the case, the measure would be violative of Article 2, Section 16 of the Kansas Constitution, which states:

> "No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title. No law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed. The provisions of this section shall be liberally construed to effectuate the acts of the legislature." (Emphasis added.)

Presumably, the two subject matters at issue are the exemption from the UCCC finance charge rates found at new subsection (8) of section 1, and the provision for the enactment of rules and regulations governing adjustable rate loans in section 2.

As originally adopted, Section 16 of Article 2 did not contain the last sentence contained therein presently, which was added in 1974. A part of the Kansas Constitution from the outset, the section has been relied on in numerous decisions which found two or more subjects contained in bills which were accordingly declared void. See, e.g., State ex rel., Stephan v. Thiessen, 228 Kan. 136 (1980), State v. Barrett, 27 Kan. 213 (1882). However, the court has also recognized that a statute should not be declared violative

of this section unless the invalidity is manifest [State v. Roseberry, 222 Kan. 715 (1977)], and that an act is to be given liberal construction with all doubts resolved in favor of its constitutionality. Brickell v. Board of Education, 211 Kan. 905 (1973). In looking past technical interpretations, the court has identified the following substantive evils which this section is designed to prevent:

> "[T]he prevention of a matter of legislative merit from being tied to an unworthy matter, the prevention of hodge-podge or logrolling legislation, the prevention of surreptitious legislation, and the lessening of improper influences which may result from intermixing objects of legislation in the same act which have no relation to each other." Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 622 (1976).

This language was cited with approval in both State ex rel., v. Thiessen, supra, and in State ex rel., Stephan v. Carlin, 230 Kan. 252 (1981). In both, non-related subject matters lead to findings of invalidity.

In our opinion, such a finding is not warranted here. Subsection (8), which is contained in section 1, states:

> "This section [16a-2-204] shall not apply to a loan secured by an interest in land subordinate to a prior mortgage and held by a lender other than the lender of the first mortgage, the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and any amendments thereto, unless made subject hereto by agreement."

Section 2 reads as follows:

> "The state bank commissioner, consumer credit commissioner, savings and loan commissioner and credit union administrator shall jointly adopt rules and regulations for the purpose of governing loans made under the provisions of subsection (h) of K.S.A. 16-207, and any amendments thereto, and subsection (8) of K.S.A. 16a-2-401, and any amendments thereto. Such rules and regulations shall be published in only one place in the Kansas administrative regulations as directed by the state rules and regulations board." (Emphasis added.)

Both of these provisions, it may be noted, deal with adjustable rate loans, in that both reference K.S.A. 16-207(h) (as amended by 1982 Senate Bill No. 539), for it is this latter measure which initially authorized such loans. The first provision removes additional types of realty loans from finance charge ceilings, here established by the UCCC instead of the general usury law, while the second authorizes rules and regulations to be adopted governing such loans. In that the first provision cannot be read except by making reference to K.S.A. 16-207(h), as amended, the reference to both it and K.S.A. 16a-2-401 in Section 2 does not interject a totally unrelated subject into the bill. Rather, the subject matter of both provisions relates to the making of adjustable rate loans, as the same are defined by K.S.A. 16-207(h), as amended earlier during the same session by Senate Bill No. 539. Given these considerations, it is our opinion that a liberal construction of 1982 Senate Bill No. 559 permits the inclusion of both the provisions quoted hereinabove.

Your second inquiry concerns the effect of section 2 of the bill as it relates to the adoption of rules and regulations "governing loans made under the provisions of" K.S.A. 16-207(h), as amended, and K.S.A. 16a-2-204, as amended. You express the concern that the section as it now reads is an unconstitutional delegation of power by the legislature. Specifically, in that Article 2, Section 1 of the Kansas Constitution provides that the legislative power is vested only in the house of representatives and senate, an unauthorized delegation is against public policy and therefore void. State v. Crawford, 104 Kan. 141 (1919).

Beyond question, the legislature may delegate to an administrative body some of the legislature's functions when the policy is fixed and standards are definitely established which determine the manner and circumstances of the exercise of such power. State ex rel., Schneider v. Bennett, 219 Kan. 285, 300 (1976), citing Board of Satanta v. Grant County Planning Board, 190 Kan. 640 (1962). Further, such standards can be general, rather than minute, in their scope. State ex rel., v. Fadely, 180 Kan. 652, 664 (1957), State ex rel. v. Bennett, supra at 300. The power of an administrative agency to adopt rules and regulations is limited in nature, and to be valid such rules and regulations must be within the authority conferred. Willcott v. Murphy, 204 Kan. 640 (1970). As a necessary corollary, it also follows that an administrative regulation which goes beyond or conflicts with the legislative authorization is void. Marcotte Realty & Auction, Inc. v. Schumacher, 225 Kan. 193 (1979).

In our view, Section 2 of the bill, when read in pari materia with the related section of 1982 Senate Bill No. 539, establishes general standards for the adoption of rules and regulations by the four named agencies. First, both subsection (8) of K.S.A. 16a-2-204, as amended, and subsection (h) of K.S.A. 16-207, as amended, have the effect of removing any statutory ceiling on the finance charge or interest rate which may be imposed. Accordingly, any rules and regulations adopted by the four administrative agencies could not reimpose any limit on such rates without going beyond the limits imposed by the statute.

Second, as noted hereinabove, Section 2 of Senate Bill No. 559 makes reference to K.S.A. 16-207(h), which was added by Senate Bill No. 539. There, the interest rate limits contained in the statute are made inapplicable if the note that is secured by a real estate mortgage permits "adjustment of the interest rate, the term of the loan or the amortization schedule." The enumeration of these factors provides additional standards to guide the adoption of a regulation pursuant to Section 2. In that the four agencies could not limit the effect of these factors nor add others, they are limited to "filling in the details," something which has been approved in previous decisions. Gumbhir v. Kansas State Board of Pharmacy, 228 Kan. 579 (1980), State ex rel., Schneider v. City of Topeka, 227 Kan. 115 (1980). Therefore, it is our opinion that there do exist guidelines, albeit general ones, for the adoption of rules and regulations under Section 2, leaving the section constitutional as a limited delegation of legislative authority.

For your third inquiry, you question whether the scope of the rules and regulations adopted under Section 2 could include loans made under K.S.A. 16-207(h), as amended, as well as those loans subject to the UCCC under K.S.A. 16a-2-204, as amended. We believe that the plain wording of section 2, set out above, can lead to no other conclusion but that both types of loans are to be so included. As the two statutes are specifically referred to, it is evident that the purpose and intent of the legislature was to include both, leaving an examination of additional factors unnecessary (i.e., legislative history, contemporary circumstances, other statutes, etc.). See, e.g. Callaway v. City of Overland Park, 211 Kan. 646 (1973).

In conclusion, pursuant to K.S.A. 16a-2-401 (as amended by 1982 Senate Bill No. 559), a supervised lender may make loans in which the rate of interest may be periodically adjusted where any such loan is secured by an interest in land subordinate to a prior mortgage held by a lender other than the

supervised lender. Section 2 of the bill, which authorizes the promulgation of rules and regulations governing such adjustable rate loans, also applies to loans made pursuant to K.S.A. 16-207(h) (as amended by 1982 Senate Bill No. 539) which are secured by a real estate mortgage. 1982 Senate Bill No. 559 does not contain more than one subject matter so as to violate Article 2, Section 16 of the Kansas Constitution, nor is section 2 of the bill an unlawful delegation of power by the legislature.

Very truly yours,

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RTS:BJS:JSS:hle