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March 10, 1980

ATTORNEY GENERAL OPINION NO. 80- 64

The Honorable Paul Hess
State Senator, Thirtieth District
Room 120-S
Statehouse
Building Mail

Re: Contracts and Promises -- Interest and Charges --
Computation of Usury Rate

Synopsis: Pursuant to K.S.A. 1979 Supp. 16-207 (as amended by section 1 of 1980 Senate Bill No. 731, which took effect on February 25, 1980), the legislature has prescribed a fluctuating usury rate that is established monthly at one and one-half percentage points above the average weighted yield of mortgages accepted under the Federal Home Loan Mortgage Corporation's weekly purchase of loans secured by residential mortgages. In order to effectuate the legislative purpose and intent underlying this legislation, the "noncompetitive yield" that is utilized to compute the monthly usury rate must be such yield as is in effect on the first day of the month. Although such noncompetitive yield results from FHLMC's weekly auction on Friday, and it is published in The Wall Street Journal on the following Tuesday, it does not take effect until the Wednesday immediately succeeding said auction. Thus, the noncompetitive yield in effect on the first day of a month is the noncompetitive yield which takes effect on the Wednesday immediately preceding said first day of the month.

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Dear Senator Hess:

You have requested our opinion concerning the computation of the interest ceiling prescribed by subsection (b) of K.S.A. 1979 Supp. 16-207 (as amended by section 1 of 1980 Senate Bill No. 731). As recently enacted, taking effect upon its publication on February 25, 1980, the pertinent provisions of this subsection read as follows:

"(b) The maximum effective rate of interest per annum for notes secured by all real estate mortgages and contracts for deed to real estate executed on or after the effective date of this act shall be at an amount equal to one and one-half percentage points above the average weighted yield of mortgages accepted under the federal home loan mortgage corporation's weekly purchase program effective on the first day of each month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof."

Pursuant to these provisions, the legislature has now prescribed a fluctuating usury rate that is dependent upon the "average weighted yield" of mortgages accepted under the Federal Home Loan Mortgage Corporation's (FHLMC) weekly purchase of loans secured by residential mortgages. Based on the information you have provided us, it is apparent that such average weighted yield is determined pursuant to a bid pricing system instituted by FHLMC. Under that system, FHLMC accepts on Friday of each week offers from sellers meeting prescribed criteria to sell mortgage packages. From this auction, FHLMC not only determines the minimum acceptable net yield to the corporation, but also computes the "average weighted yield" of all bids accepted at the auction, which is referred to as the noncompetitive yield. The noncompetitive yield is applicable to the corporation's purchase of mortgages from sellers who offer mortgage packages of up to \$500,000. On the Tuesday immediately succeeding the Friday auction, the noncompetitive yield is published in The Wall Street Journal, and on the following day, Wednesday, the FHLMC accepts "noncompetitive offers" from eligible sellers, based on this yield.

It is the application of the foregoing procedure to the computation of the interest ceiling under Senate Bill No. 731 which has prompted your inquiry. Under this bill, the ceiling is established at one and one-half percentage points above FHLMC's noncompetitive yield. It is computed monthly, effective on the first day of each month. In light of these requirements and the FHLMC's procedure for determining the

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noncompetitive yield, you have asked our opinion as to which of FHLMC's weekly auctions is determinative of the noncompetitive yield that is to be used in computing the monthly usury ceiling, where the first day of a particular month is on Friday or within four days thereafter.

To illustrate your question, you have noted that March 1, 1980, occurred on Saturday, one day after FHLMC's weekly auction on February 29, 1980. With respect to this specific instance you have asked whether the noncompetitive yield resulting from this auction is to be used in computing the usury ceiling for the month of March, or whether the noncompetitive yield resulting from the auction on Friday, February 22, 1980, is to be used. In our judgment it is the latter.

Obviously, to give full effect to the legislature's purpose in enacting Senate Bill No. 731, there must be certainty as to which noncompetitive yield constitutes the basis for determining the monthly usury ceiling. It would defeat such purpose if the various lending institutions were to compute the usury ceiling using different starting points. In our judgment, in order to obtain the requisite certainty upon which the fair and equal application of this law depends, the usury ceiling must be based upon the noncompetitive yield that is in effect on the first day of the month.

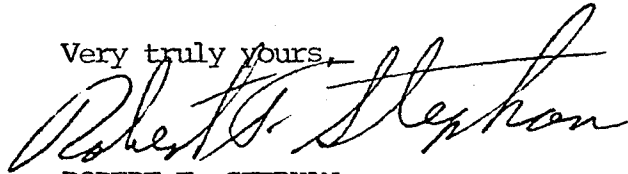
To determine this, it first must be ascertained when the noncompetitive yield takes effect. From the procedure outlined above, there would appear to be three choices: (1) Friday, the time of FHLMC's weekly auction when data necessary to determine the noncompetitive yield are generated; (2) the Tuesday immediately succeeding such auction, when such noncompetitive yield is published; or (3) the Wednesday immediately succeeding such auction, at which time eligible sellers may tender a noncompetitive offer for a purchase commitment by the FHLMC at said noncompetitive yield. In our judgment, the latter is the date which must be utilized in order to effectuate the legislature's intent and purpose.

While it is true that the noncompetitive yield may be determined following the weekly auction on Friday, and it is equally true that such yield is published on the following Tuesday, it is to be noted that such yield is not effective for noncompetitive offers of eligible sellers until the Wednesday following the Friday auction. We believe that fact is significant. Such yield is not effective for the purposes for which it is determined until the Wednesday immediately succeeding the previous weekly bid day. Even though the noncompetitive yield or the average weighted yield of all bids accepted at that auction may be known on the auction day itself, it is not effective until the following Wednesday, and it remains in effect until the succeeding Wednesday.

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Therefore, it is our opinion that, since the noncompetitive yield does not take effect until the Wednesday immediately following FHLMC's auction on Friday, the noncompetitive yield that is in effect on the first day of a month is the noncompetitive yield that is applicable to the noncompetitive offers to sell mortgage packages to the FHLMC on the Wednesday immediately preceding said first day of the month. Although Senate Bill No. 731 does not provide an abundance of insight into the underlying legislative intent, we believe our conclusion to be in consonance with the pertinent provisions of this legislation, as well as the intent and purpose for its enactment.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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