



STATE OF KANSAS

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October 21, 1982

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ATTORNEY GENERAL OPINION NO. 82- 227

John A. O'Leary, Jr.
State Bank Commissioner
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 authority granted by 1982 Senate Bill No. 559, after July 1, 1982 a supervised lender may make certain types of consumer loans in which the rate of interest may be periodically adjusted, regardless of the limits imposed by K.S.A. 16a-2-401, although such limits may be made applicable by agreement of the parties. While a lender could make adjustable rate loans prior to July 1, 1982, it was without the authority to exceed such interest ceilings in loans made prior to the new act. Additionally, such ceilings continue to apply to loans with adjustable rates which do not come under the scope of the new amendments, which cover only loans secured by an interest in land that is subordinate to a prior mortgage held by a different lender. Attorney General Opinion No. 82-128 is hereby modified to be consistent with this opinion. Cited herein: K.S.A. 16a-1-102, 16a-2-401 (as amended by L. 1982, ch. 94).

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Dear Mr. O'Leary:

As State Bank Commissioner, you request our opinion on a question which has been raised by a prior opinion of this office, No. 82-128. That opinion, issued on June 11, 1982, dealt with the effect of 1982 Senate Bill No. 559 on the making of

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certain classes of loans with adjustable interest rates by supervised lenders. You inquire concerning the effect of that opinion on loans made prior to the effective date of the act.

1982 Senate Bill No. 559 (L. 1982, ch. 94) amends K.S.A. 16a-2-401. That statute, a part of the Kansas Consumer Credit Code (KCCC), establishes maximum interest rates for loans made by supervised lenders, as well as for open-end credit transactions. As amended, the statute includes a new subsection (8), which states:

"This section [K.S.A. 16a-2-401] 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."

In our earlier opinion, we concluded that the effect of the above change is to allow supervised lenders to make certain types of adjustable rate loans as of July 1, 1982. We further stated that a supervised lender was without the authority to make such loans prior to the effective date of the change. As these conclusions have apparently been of some concern to several Kansas banks, further clarification will be helpful.

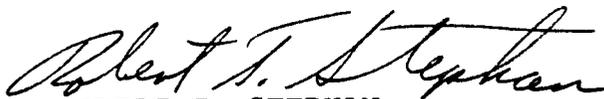
First, while we stand by the above conclusions, it should be emphasized that they must be read in light of the intent of the bill, *i.e.*, to remove the interest rate ceilings of K.S.A. 16a-2-401 from loans containing adjustable interest rates. Given the interest rates prevalent at the time the measure was introduced, as well as subsequently passed by the legislature and signed by the governor, such a lifting was needed if the adjustable rate feature was to have any effect. In other words, as loans were already being made at the maximum interest rate, there was no place for the rate to rise at periodic intervals later in time. This problem was remedied by the bill, which now allows the interest rates on certain types of consumer loans (those secured by an interest in land subordinate to an interest held by an earlier lender) to rise beyond the maximum statutory limit of 21%.

Accordingly, it was the making of loans with this interest rate feature which was not permitted prior to July 1, 1982. Adjustable rate loans were not proscribed by the KCCC prior to that date, and we are informed many were actually made. As the KCCC is an act which sets limitations, rather than

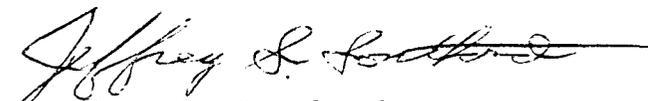
confers authority, the absence of any express grant for adjustable rate loans within the interest rate ceilings is of no import. See, e.g., K.S.A. 16a-1-102, in which the purposes of the act are set forth. Such adjustable consumer loans which are not secured in the manner stated in K.S.A. 1981 Supp. 16a-2-401(8), as amended, continue to be governed after July 1, 1982 by the limits on interest rates and other practices established by the KCCC.

In conclusion, pursuant to authority granted by 1982 Senate Bill No. 559, after July 1, 1982 a supervised lender may make certain types of consumer loans in which the rate of interest may be periodically adjusted, regardless of the limits imposed by K.S.A. 16a-2-401, although such limits may be made applicable by agreement of the parties. While a lender could make adjustable rate loans prior to July 1, 1982, it was without the authority to exceed such interest ceilings in loans made prior to the new act. Additionally, such ceilings continue to apply to loans with adjustable rates which do not come under the scope of the new amendments, which cover only loans secured by an interest in land that is subordinate to a prior mortgage held by a different lender. Attorney General Opinion No. 82-128 is hereby modified to be consistent with this opinion.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

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