

USURY:

Loans governed by Missouri usury statutes may not exceed eight per cent interest, even though FHA and VA permit maximum rate of eight and one-half per cent.

OPINION NO. 107

January 9, 1970



Honorable R. J. King, Jr.
Representative - District 39
816 South Hanley Road
Clayton, Missouri 63105

Dear Mr. King:

This official opinion is issued in response to your recent request in which you ask whether FHA and VA insured loans may be made with an interest rate of eight and one-half per cent, as presently authorized by the federal government, in view of the Missouri usury statutes.

Section 408.030, RSMo 1959, provides as follows:

"The parties may agree, in writing, for the payment of interest, not exceeding eight per cent per annum, on money due or to become due on any contract."

The Federal Housing Administration (FHA) and the Veterans' Administration (VA) provide guarantees for certain loans secured by real estate. The purpose of these guarantees is to enable purchasers to buy houses with relatively small down payment. The initial loans are not made by any government agency, but rather are made by certain lenders such as savings and loan associations or banks, to purchasers of houses. We have found no case holding that the initial loan transaction between the individual borrower and the authorized lender is not governed by local law, as to permissible rate of interest or otherwise. See for example *Silver Homes, Inc. v. Marx & Bendorf, Inc.*, 333 S.W.2d 810 (Tenn. 1960).

It is conceivable that a federal agency might be empowered by Congress to make loans which are free from the requirements of the state usury statutes, but discussion along these lines is

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academic at the present time because we find nothing in the federal statutes which purports to make state regulation inapplicable. Since FHA does not make loans itself but simply guarantees loans made by private lenders, it appears that state law would apply unless there is an express provision excluding the application of state law.

Some problems relating to FHA and VA guaranteed loans were considered in Opinion No. 506, (1969), a copy of which is enclosed. In that opinion we came to the conclusion that the Missouri statutory provisions which purported to exempt FHA insured loans made by certain lenders from the Missouri usury statutes were unconstitutional, for the reason that they contained a classification of lenders in violation of Article III, Section 44 of the Constitution of Missouri. We are therefore of the opinion that nothing in the Missouri law forecloses the application of Section 408.030, above cited.

We anticipate the contention that FHA and VA guaranteed loans will not be available to Missouri borrowers unless lenders are authorized to charge the maximum interest permitted by federal regulation. The usury statutes, however, were adopted for the protection of borrowers. *Coleman v. Cole*, 158 Mo. 253, 59 S.W. 106 (1900); *Missouri Real Estate Syndicate v. Sims*, 179 Mo. 679, 78 S.W. 1006 (1904). An underlying premise is that one should not borrow money if it is not available to him within the limits specified in the statutes. For many years there was no problem of usury with regard to FHA and VA guaranteed loans, for the reason that the maximum rate permitted by the agency was below the eight per cent rate permitted by Missouri law. If there is a hardship because the agency rate is now higher, the legislature may provide relief. As the statutes now stand, however, a real estate loan is usurious if the interest rate exceeds eight per cent per annum.

Opinion No. 506, enclosed, contains a discussion of the components of interest.

CONCLUSION

The fact that a loan is guaranteed by FHA or VA does not take it out from under the Missouri usury statutes. Even though the federal agency may specify a maximum rate of eight and one-half per cent for loans which it is willing to guarantee, a loan to which the Missouri usury statute applies is usurious if the interest rate exceeds eight per cent per annum.

Honorable R. J. King, Jr.

The foregoing opinion, which I hereby approve, was prepared by my special assistant, Charles B. Blackmar.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure. Op. No. 506
12-18-69, Ottinger