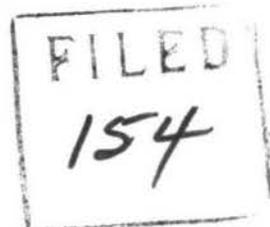


April 23, 1974

OPINION LETTER NO. 154
Answer by letter-Blackmar

Honorable Kenneth J. Rothman
Representative, District 77
Room 308, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Rothman:

This letter is in response to your request for an opinion on the following question:

"Whether under 12 USC Section 85 whereby a national bank is permitted to charge the state interest rate or 1% above the Federal Reserve Discount rate, whichever is higher, does this mean that the amount of interest charged on a loan would remain constant throughout the period of the loan or would it fluctuate as the discount rate might go up or down?"

In Opinion No. 343, November 21, 1973, to you, we held that Congress had the power to specify, notwithstanding state law, the rate of interest national banks may charge and that Congress had done so in 12 U.S.C. §85. That section provides in pertinent part to this request as follows:

"Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate of ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal reserve district where the bank is

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located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this title. . . ."

The question you asked is one of federal law and we find no recorded decisions directly in point. It is our view that when a national bank makes a loan at a rate in excess of that permitted by state law, but at a rate not more than 1% above the discount rate then in effect, the bank may continue to receive interest at the contracted rate even though the discount rate declines during the course of the loan. We believe that had Congress intended that the rate on the loan fluctuate with changes in the discount rate it could have so stated in express language.

In conjunction with your opinion request, we have contacted the Office of the Comptroller of the Currency. That office is responsible for administering the National Bank Act, 12 U.S.C. §38, et seq., and the supervision of national banks. The Comptroller's Office has advised us that while the office has issued no official rulings on the question you have presented, it has advised several national banks by letter that with respect to loans made at rates above state usury rates, but not more than 1% above the discount rate in effect at the time when the loan is made, the bank may continue to receive interest at the rate contracted for in the event the discount rate declines during the course of the loan to a point where the rate on the loan is in excess of 1% above the then existing discount rate. We enclose a copy of a letter sent by Kenneth W. Leaf, Chief National Bank Examiner, under date of November 13, 1973, to the Executive Director of the Mississippi Bankers Association so holding.

It is our view that a national bank making a loan at a rate that is not more than 1% above the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District where the bank is located may continue to receive interest at such rate during the course of the loan even though the discount rate may decline during the course of the loan to a point where the rate charged on the loan is in excess of 1% above the discount rate and the rate charged on the loan would be usurious under state law.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure