

SMALL LOAN COMPANIES : Commissioner of Finance
LOAN AND INVESTMENT COMPANIES : authorized by statute to
: supervise advertising.

September 17, 1945



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Honorable M. E. Morris
Commissioner of Finance
Jefferson City, Missouri

Dear Commissioner Morris:

Your letter of June 5, 1945, has been received.

Your letter states:

"I am enclosing a prepared statement in connection with the advertising combination circular and letter of the General Finance Loan Company, 315 North Seventh Street, St. Louis, Missouri.

"It is the intention of this Department to outline policies in connection with loan company advertising and in this connection I shall appreciate your opinion of the enclosed circular based upon the conclusions outlined in the statement."

The first paragraph of your letter states that you are accompanying your letter with a "prepared statement", which you desire also to have this office inspect. This statement seems to be a memorandum prepared by some attorney in which some of the statutes relating to the small loan business, and the loan and investment business are cited and quoted, and also included in the statement are some of the regulations heretofore adopted by the Finance Department respecting the conduct of such companies. The statement fails to cite and quote other statutes which we think bear directly upon the question submitted in your letter.

Your letter in particular, requests the opinion of this office respecting the regulation by the Finance Depart-

ment of advertising by such companies. We shall try to confine this opinion to that question although it will be necessary, and we hope helpful, to make some other observations respecting the general powers the Finance Department now has under the statutes of this State over small loan companies, and loan and investment companies.

Section 7879, Article 1, Chapter 39, R.S. Mo. 1939, is in part as follows:

"The State Department of Finance shall have charge of the execution of the laws relating to * * * * * persons, copartnerships and corporations engaged in the small loan business in this state, * * *."

That part of Section 8160, Article 7, Chapter 39, R.S. Mo. 1939, applying to the questions here being considered as to the duties of small loan companies is as follows:

"The licensee shall keep such books and records in his place of business as in the opinion of the licensing official will enable the licensing official to determine whether the provisions of this article are being observed. * * * "

Section 8161, same Article and Chapter, prohibiting small loan companies from publishing any false or misleading advertising matter, is as follows:

"No licensee under this article, shall print, publish, distribute, or cause the same to be done in any manner whatsoever, any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive, or which shall fail to state in bold type the rate per month of interest which the licensee or other person, co-partnership or corporation, proposes to charge for the lending of money, credit, goods or things in action."

That part of Section 8155, same Article and Chapter empowering the Commissioner of Finance to revoke the license of a small loan company for cause, is as follows:

"The licensing official may, upon notice to the licensee and reasonable opportunity to be heard, revoke such license if the licensee has violated any provision of this article; * * * "

Some of the Sections of Article 8, Chapter 33, R.S. Mo. 1939, relating to loan and investment companies were repealed by the Legislature of 1943, and new Sections were enacted in lieu thereof. Among the new Sections enacted, is Section 5425a, Laws of Missouri, 1943, page 505, giving the Commissioner of Finance the same direct and positive powers, supervision and control over loan and investment companies organized under Article 8, Chapter 33, R.S. Mo. 1939, relating to the subject of loan and investment companies as he had previously, and still has over small loan companies. That part of said Section 5425a, so empowering the Commissioner of Finance, is as follows:

"The Commissioner of Finance shall have and exercise the same supervision, authority and power over, and shall be charged with the same duties toward all corporations organized under the provisions of Article 8, Chapter 33, Revised Statutes of Missouri, 1939, as he now has and exercises and is charged with by law with reference to licensees under the provisions of Article 7, Chapter 39, Revised Statutes of Missouri, 1939, as far as the same may be applicable, * * * ."

We then observe that under said Section 7879, supra, in the provisions for the organization of the Finance Department such Department was given charge of small loan companies.

Next, looking into the provisions of Section 8160, supra, we see the reason why the statute requires small loan companies to keep books and records of their transactions in their places of business. That purpose is so

that the licensing official (the Commissioner of Finance) may determine whether the provisions of Article 7, Chapter 39, are being observed under the authority given him in Section 7879, supra, over such companies.

Then the next Section of our statutes, 8161, supra, prohibits, in positive terms, false advertising upon the part of small loan companies.

For the violation of "any provision" of Article 7, Chapter 39, under Section 8155, supra, the licensing official (the Commissioner of Finance) is empowered, upon notice to the licensee, and a hearing granted him, to revoke his license.

This brings us to Section 5425a, Laws of Missouri, 1943, page 505, supra, which specifies the duty, not a mere directive, but the duty, on the part of the Finance Commissioner, to exercise the same supervision, authority and power over loan and investment companies that he has heretofore had, and now still has over small loan companies.

There is nothing equivocal about any of these statutes. They are plain and direct, and we think, confer upon the Finance Commissioner ample power, and make it his duty to exercise the supervision, control and authority over both small loan companies, and loan and investment companies, which is specified in these statutes with respect to keeping books and records, to control and determine in any reasonable way what their method of advertising shall be, and to make such other regulations of a reasonable character as will protect the public against abuses which may be indulged in by these companies, if not strictly supervised.

We think many of the statements made in the accompanying memorandum statement very properly point out violations of the statutes, and of the rules and regulations heretofore adopted by the Commissioner of Finance by the General Finance Loan Company, 315 North Seventh Street, St. Louis, Missouri.

It is apparent when one reads the advertising combination circular and letter of the said General Finance Loan Company that they are publishing false and misleading information with respect to patrons saving 40% to 50% of small loan charges. It is said in the information given in the "prepared statement" accompanying your letter, that this company has an advertisement on its window in large letters "you can save 40% to 50% of legal small loan charges!", the same as is on the first page of their combination

circular and letter.

Our attention has been called to the cases of Commonwealth vs. Reilly, 248 Mass. 1, 142 N.E. 915, and State vs. Schaengolb, 13 Ohio L. Rep. 130. These cases, while they deal with false and misleading advertisements, we think may be put aside because they involved criminal prosecutions, such as are provided for under our Section 8169, R.S. Mo. 1939, which makes the violation of any of the provisions of Article 7, Chapter 39, R.S. Mo. 1939, which would include false or misleading advertising a misdemeanor. Those cases do not refer to the question of the regulatory powers of licensing officials over such companies as small loan, and loan and investment companies. Such companies in this State could be prosecuted under said Section 8169, for false and misleading advertising, but that is not the question here. The question we are considering is the authority of the Finance Commissioner to promulgate such reasonable rules and regulations as will confine such companies to proper and legitimate advertising which in itself would avoid any violation of Section 8161, R.S. Mo. 1939, and avoid the penal provisions of said Section 8169.

Attention is also directed to the case of General Motors Corporation et al. vs. Federal Trade Commission, 114 F. (2d) 33. That was a case growing out of the broad powers given the Federal Trade Commission under the Federal Trade Act of 1914, found in Volume 38, Gen. U.S. statutes, page 717, and is also published in Title 15, Section 45, U.S.C.A. Under the provisions of that Act, the Federal Trade Commission had made a cease and desist order against General Motors Corporation for what was termed misleading and untruthful advertising. The advertisement complained of, published by the General Motors Corporation was as follows: l.c. 34:

"GMAC

"General Motors Acceptance Corporation
Reduces Time Payment Costs on New Cars
With a new 6% Plan

(Simple as A, B, C)
(A- Take Your Unpaid Balance)
(B- Add Cost of Insurance)
(C*- Multiply by 6% -- 12 months' plan)
((One-half of one percent per month)
(for periods more or less than 12)
(months) That's your <u>whole</u> financing)
(cost. No extras. No service fees.)
(No other charges.)

The case itself, and the Act creating the Federal Trade Commission reveal that the Commission, under said Act, has very broad judicial powers to regulate advertising respecting competition in interstate commerce, and the power when deemed misleading, in the exercise of its discretionary and judicial powers, to cause any person or corporation indulging in false or misleading advertising to cease and desist therefrom.

The case would not furnish a precedent for the determination of the question of supervision and controlling the advertising indulged in in the instant case by one or both of the companies, one a small loan company, and the other a loan and investment company, now being considered. But because of the analogy of reasoning used in that case to the conditions here it may be made applicable to the powers of the Commissioner of Finance, although somewhat limited by construction of our statutes by our Supreme Court, in the supervision and control of advertising of small loan companies and loan and investment companies. We therefore believe it may be helpful to cite and quote, as has been suggested in said "prepared statement", the above case in part. We therefore take the liberty to quote from said case, l.c. 35, 36, the following:

"There was evidence before the Commission to support its finding that the advertisements referred to 'Have the capacity and tendency to mislead and deceive, and have misled and deceived, a substantial part of the purchasing public into the erroneous and mistaken belief that the said "6%" or "six per cent" finance plan, as above set forth, contemplates a simple interest charge of 6% per annum upon the deferred and unpaid balance of the purchase price of the motor vehicles sold * * *, and tends to cause, and has caused, such purchasing public to buy motor vehicles manufactured by General Motors because of that erroneous and mistaken belief, when in truth and in fact the total of the credit charge, computed in accordance with said "6%" or "six per cent" plan, amounts to approximately 11½% simple interest per annum upon the deferred and unpaid balance, as diminished by

the installment payments made, of the price of the motor vehicles sold to the purchasing public.'

"That the rate of interest is actually almost double 6% simple interest, as found by the Commission, is shown by Commission's Exhibit 66, which is a booklet issued by GMAC, and is not contested by General Motors or its subsidiaries. That the rate is so much greater than 6% is because the GMAC time payment plan of financing involves a 6% charge 'on the full amount of the account originally financed from the date it begins to run to the date the account is closed, regardless of the fact that the account is divided into, and amortized gradually and regularly by, monthly payments of equal amounts.'

"While we do not regard the plan used here as inevitably misleading, we think that in a good many cases it would be likely to cause the purchaser of a car to believe that he was paying an interest rate of 6% per annum upon his deferred instalments and that under it he was afforded the convenience of financing through the agency that sold the car at as good rates as he could obtain by borrowing from his bank and paying for the car in full.

"It is argued that the advertisement we have quoted could not mislead. The advertisement stated on its face: 'It is not 6% interest, but simply a convenient multiplier anyone can use and understand.' Nevertheless the calculation of the difference between a rate of 6% per annum and the amount payable under the plan would not be easy for the ignorant, as was demonstrated by the inability of at least one witness to make the calculation. Nor would the distinction be observed by the careless. The words in the fourth line of the advertisement: 'With a new 6% plan,' arrest the attention immediately and many a purchaser would not continue to read the rest

of the advertisement or digest the warning statement that the 6% was not interest, but merely a multiplier. Moreover, there was a body of advertising matter on billboards and on window posters in which no such guarded statement was made and in which the attention of the public was directed pointedly to the unexplained symbol '6%'.

"It is noteworthy that the plan involved such competitive advantages that rival companies doing a large proportion of the business of the country felt obliged to adopt and to advertise it with emphasis on the '6%' symbol. It is objected by the petitioners that the reason the plan appealed to the public and was adopted by competitors was only that the mode of calculating the instalment payments was very simple and that under the plan the finance cost of an instalment purchase was less than formerly. This really does not affect the issue of the propriety of the advertising. That, under the plan, GMAC was offering to finance instalment purchases at lower costs than before did not justify a form of advertising which has been found by the Commission, upon substantial evidence, to result in deception of the public. It may be that there was no intention to mislead and that only the careless or the incompetent could be misled. But if the Commission, having discretion to deal with these matters, thinks it best to insist upon a form of advertising clear enough so that, in the words of the prophet Isaiah, 'wayfaring men, though fools, shall not err therein,' it is not for the courts to revise their judgment."

We mentioned hereinabove that our Supreme Court by construction had limited the authority of the Commissioner of Finance to the exercise of such powers only as

the statutes positively prescribe he may exercise. So construing our statutes relating to the subject, our Supreme Court in the case of State ex rel. Banister et al., v. Cantley, 52 S.W. (2d), l.c. 398, said:

"The functions of the finance commissioner, like any other official, are limited to the powers and duties imposed upon him by the statute which creates the office. 46 C.J. 1031; State ex rel. Bradshaw v. Hackmann, 276 Mo. 600, 208 S.W. 445; Lamar Township v. City of Lamar, 261 Mo. loc. cit. 189, 169 S.W. 12, Ann. Cas. 1916D, 740.

"An official such as the finance commissioner has no implied powers except such as are necessary to the effective discharge of the powers expressly conferred. 46 C.J. 1032."

The case just cited means, as we understand it, that the Commissioner of Finance may exercise such powers over persons and corporations respecting the conduct of their financial affairs as are directly granted him by statute, or as may be incidentally necessary to carry out and perform the duties placed upon him by statute.

We believe the duties cast upon the Commissioner of Finance in the statutes above quoted are positive and mandatory respecting the supervision and control of small loan, and loan and investment companies. We believe he has the duty under such statutes to establish reasonable rules to prevent such companies from publishing and distributing false and misleading advertisements. This we believe is so, because Section 8161, supra, forbids such companies from advertising, printing or distributing, or publishing in any manner whatsoever, any written or printed statement calculated to deceive or which may, in anywise, be a false statement. We believe the Commissioner of Finance would have the right to establish such rules as would keep separate the advertising of a small loan company from the advertising of a loan and investment company because of the fact that small loan companies may make loans only up to \$300 at certain rates of interest, whereas loan and investment companies may make loans above \$300 at other rates of interest, so that neither company could switch applications for loans to the other

under a misleading advertisement, or otherwise mislead the public.

We have carefully read and inspected the two sets of rules and regulations adopted by the Commissioner of Finance in April, 1944, concerning loan and investment companies, and those adopted in 1939, relating to small loan companies. We observe nothing harsh or unreasonable in these regulations. We believe they might be condensed so that they would be more readily read and understood by persons interested, but under the powers given by our statutes to the Commissioner of Finance under Sections 7879, supra, 8155, supra, and 5425a, supra, when read and construed, which they should be with the terms of Section 8161, supra, the Commissioner of Finance is given the lawful power and authority to regulate both small loan companies and loan and investment companies respecting their advertisements, and respecting their general conduct so that the Commissioner of Finance may be at any and all times kept informed of their obedience to the terms of Article 8, Chapter 33, R.S. Mo. 1939, and as amended, Laws of 1943, page 505, in said Section 5425a, and the terms of Article 7, Chapter 39, R.S. Mo. 1939.

CONCLUSION.

It is, therefore, the opinion of this Department that the said General Finance Company by the combined circular and letter, printed, published and distributed by it, violates the terms of Section 8161, supra, said company thereby makes statements with regard to the rates and charges of its loan business which are false and misleading, by stating that patrons may save 40% to 50% of small loan charges; that said combined circular and letter fails to state in bold type the rate of interest per month to be charged patrons as required by said Section 8161.

That said General Finance Company, and the GFC Corp. are violating many of the regulations adopted by the Finance Department of this State in 1944, respecting small loan companies, and in 1939, respecting loan and investment companies, in that they are advertising jointly.

That said combination, circular and letter, is not dignified and conservative in form and appearance, and that said window advertisement both in form and appearance, also violates said rules and regulations.

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That said window advertisement does not state what rate of interest exclusively applies on unpaid balances to loans of \$300 or less, and that it does not distinguish between rates of interest paid small loan companies and loan and investment companies, because loan and investment companies must charge not to exceed 8% per annum on their loans which are above \$300.

That both of said companies disregard many other rules and regulations heretofore adopted as aforesaid.

It is further the opinion of this Department that the Commissioner of Finance may exercise the power granted him by the above quoted and cited statutes, to outline policies in connection with small loan company, and loan and investment company advertisements, that he may find necessary to the enforcement of said Section 8161.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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