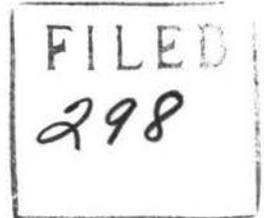


September 16, 1974

OPINION LETTER NO. 298  
Charles B. Blackmar



Mr. William R. Kostman  
Commissioner of Finance  
Division of Finance  
Post Office Box 716  
Jefferson City, Missouri 65101

Dear Mr. Kostman:

This letter is issued in response to your request in which you ask:

"Are Sections 362.380 and 408.030, RSMo 1969, unconstitutional in light of Article III, Section 44 of the 1945 Missouri Constitution."

It is our belief that they are not unconstitutional.

Section 408.030, RSMo, is the basic interest statute, allowing individuals to contract for interest at a rate not in excess of eight percent per annum.

Section 362.380, RSMo, applies only to banks and trust companies which are members of the federal reserve system, and allows them to charge interest at a rate of eight percent per annum. This section also provides as follows:

". . . the interest may be taken in advance, reckoning the days from which the note, bill or evidence of debt has to run."

Section 362.380 also provides sanctions for violations.

Article III, Section 44 of the Missouri Constitution provides as follows:

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"No law shall be valid fixing rates of interest or return for the loan or use of money, . . . for any particular group or class engaged in lending money. The rates of interest fixed by law shall be applicable generally and to all lenders without regard to the type or classification of their business."

We perceive no constitutional violation on the face of the Missouri statutes set out above. It is true that Section 362.380 applies only to certain banks and trust companies, but it does not permit these institutions to charge interest at rates which do not apply to other lenders. We do not consider that the provision for collection of interest in advance is a material variation. Therefore, we do not believe it is necessary to determine whether other lenders can collect interest in advance. In any event, banks and trust companies would remain subject to the general law, if the special statutory provisions applicable to them were held to be invalid. Nor does Section 44 of Article III of the Missouri Constitution preclude the imposition of sanctions against some lenders which do not apply to others. It applies solely to rates of interest, and not to sanctions.

We are aware of the contention that Sections 362.380 and 408.030 are rendered invalid by reason of 12 U.S.C. §85, which permits national banks to charge interest at a rate referable to the discount rate prescribed by the federal reserve bank for the area. We are aware of the fact that this rate may exceed eight percent, so that national banks located in Missouri may be authorized to charge interest at rates which would not be permitted to other lenders. We do not believe that this circumstance has the effect of rendering otherwise valid state statutes invalid.

Congress has the power to establish national banks in the exercise of its delegated powers over currency, commerce and otherwise. This has been recognized since the landmark case of McCulloch v. Maryland, 4 Wheat. 316 (1819). In the exercise of this power Congress undoubtedly has the power to prescribe the interest rates which may be charged by institutions of its own creation, and to supersede conflicting provisions of state law under the Supremacy Clause. (Article VI, Section 2, United States Constitution).

However, Article III, Section 44 of the Missouri Constitution is directed solely at the state legislature. The state legislature is told that it may not authorize special interest rates for particular classes of lenders. It has not done so in enacting

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Sections 362.380 and 408.030. If there is a lack of uniformity of interest rates, this is because of the action of the United States Congress which the state has no power to prevent. We do not believe that the intent or purpose of Article III, Section 44 was to oust the state of the power to regulate interest rates, if rates at variance with the state standard are prescribed by supervening federal authority. Article III, Section 44 does not say that all rates must be equal for all classes of lender. It simply says that the legislature must not take any action which fosters inequality.

Very truly yours,

JOHN C. DANFORTH  
Attorney General