

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

January 14, 1991

Emory L. Hilton, Director
Consumer Finance Division
Board of Financial Institutions
P. O. Box 11905
Columbia, South Carolina 29211

Dear Mr. Hilton:

You have requested an opinion regarding the situation whereby a licensed restricted lender moves an office to a different location without notifying the Board of Financial Institutions. It is my understanding that reference is made to the provisions of Section 34-29-60(b) of the Code which states in part:

... When a licensee wishes to change his place of business within a city or town he shall give written notice thereof to the ... (Board of Financial Institutions) ... accompanied by the license certificate and the Board shall engross the address change upon the certificate and return it to the licensee.

The question has been raised as to whether in circumstances where there has been a violation of such provision, the loans made at the new location would be restricted to 18% a year. It is my understanding that the provisions of Section 37-3-305 of the Code have been cited in support of such restrictive interest rate.

This response should not be construed as commenting upon any specific factual situation. However, based upon our review, it appears that in the situation described, the only penalty provisions which may be applicable would be Sections 34-29-80 and 34-29-250 of the Code. Pursuant to Section 34-29-80 the Board may revoke or suspend a license where "... (t)he licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provisions of this chapter ... (which would include Section 34-29-60) .. or any regulation or order lawfully made pursuant to

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and within the authority of this chapter." 1/ Section 34-29-250 provides that a wilful violation of a statute where a penalty has not been specifically provided, such as Section 34-29-60, is a misdemeanor subject to a fine of not more than one thousand (\$1000.00) dollars nor less than one hundred (\$100.00) dollars. In addition to these remedies, pursuant to Section 34-29-90(d) of the Code injunctive relief is authorized for violations. Of course, whether there has been a knowing violation or a violation without the exercise of due care to prevent the same is a factual matter within the discretion of the Board of Financial Institutions. Therefore, it is within the authority of the Board to determine whether a violation has occurred in the situation referenced.

As to the authority to restrict loans to 18% a year in the circumstances referenced, Section 37-3-305(1) requires filing with the State Department of Consumer Affairs and posting "in one conspicuous place in every place of business in this State in which offers to make consumer loans are extended" a maximum rate schedule. Pursuant to subsection (8) of such provision, if a creditor has not filed such a schedule in the manner specified, the maximum finance charge which may be imposed until proper filing is made is limited to 18%. It is my understanding that in the circumstances referenced there has been compliance with this requirement in that a maximum rate schedule was posted at the location where offers for loans were extended.

If there is anything further, please advise.

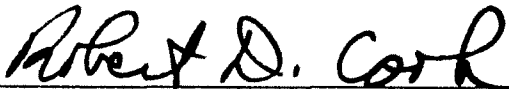
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

1/ I would note that pursuant to Section 34-29-80(e) "(n)o revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any obligor."