

1980 WL 121162 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 10, 1980

**\*1 RE: Usury Law on Real Estate Mortgages**

The Honorable Ron L. Cobb  
Member  
House of Representatives  
P. O. Box 11867  
Columbia, South Carolina 29211

Dear Representative Cobb:

You have orally requested a further opinion with regard to our opinion letter of April 8, 1980. In that opinion, we advised you that under Act No. 7 of 1979, a lender on a loan secured by a first mortgage on real estate could charge 'points' in addition to other interest charges until June 30, 1981. You have requested a further opinion on the following question:

Would the result be the same regardless of whether the purchaser or seller pays the 'points'?

As I stated to you in my previous letter, it is very difficult to make any general statement without seeing the particular documents involved in the transaction. However, it is my opinion that the result would be the same. If the seller pays the 'points' to the lending institution, he will normally pass such costs on to the purchaser through an increase in the price of the property. This would probably be construed as 'interest' to the borrower, but since Act No. 7 has no maximum interest rate, I see no problem in doing this in this fashion. If the seller pays the 'points,' but does not pass this cost on to the buyer, then this probably would not even be considered as 'interest' to the borrower.

However, I would like to caution that this opinion would only apply to a loan made under the provisions of Act No. 7 of 1979, and would not apply to a loan made pursuant to the Consumer Protection Code.

Very truly yours,

Richard B. Kale, Jr.  
Sr. Assistant Attorney General

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