

1980 WL 121155 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1980

***1 RE: Commitment Fees**

Hardwick Stuart, Jr., Esquire
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Attorneys at Law
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Columbia, South Carolina 29201

Dear Wick:

You have requested an opinion from this office as to whether a one (1%) percent commitment fee in addition to the maximum interest rate and maximum service charge allowable under the law would be usurious? In [Brummer vs. Bankers Trust of South Carolina](#), 268 S.C. 21, 231 S.E.2d 298 (1977), the South Carolina Supreme Court defined 'commitment fee' as 'the price a borrower pays for the lender's reservation of its funds.' On the other hand, interest has been defined as compensation allowed by law or fixed by the parties for the use of money. [Hadden vs. South Carolina Tax Com.](#), 183 S.C. 38, 190 S.E. 224 (1936). Therefore, there appears to be a distinction between a commitment fee, which is the charge for a lender reserving its funds, and interest, which is the charge for the use of the borrowed money. A commitment fee has been analogized to the payment made for an option (a contract to keep an offer open). [Goldman v. Connecticut General Life Insurance Company](#). 251 MD. 575, 248 A.2d 154 (1968). In conclusion, it is my opinion that a commitment fee is not interest for the loan of money and, therefore, does not fall within the provisions of Section 34-31-30 of the South Carolina Code of Laws, 1976.

It is important to note, however, that this particular point has never been litigated, although the South Carolina Supreme appears to indicate in [Brummer](#) that such fees are distinguishable from interest on loans. I can only suggest that you may desire to institute an action to have this question resolved. I did note recently that a class action had been instituted against Standard Savings and Loan Association contending that a one (1%) percent transfer fee was usurious. It is my understanding that this action is still being litigated, but you may desire to follow its course, since a court order may touch upon your particular situation.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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