

1979 WL 43568 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1979

\*1 The Honorable Isadore E. Lourie  
Senator  
District No. 7  
Post Office Box 11548  
Columbia, South Carolina 29201

Dear Senator Lourie:

In your letter of June 29, 1979, you requested an opinion from this Office concerning whether it would be legally feasible and constitutional to have a separate rate of interest for particular types of judgments, i.e., a rate of 10% on contracts and notes and 8% on torts.

It is my opinion that neither our State Constitution nor the federal constitution would invalidate a statute requiring separate rates of interest for particular types of judgments. The only major constitutional issue which I could determine is whether this type of statute is invalid as class legislation, i.e., a violation of equal protection. As long as there is a reasonable basis for the classification, and all who fall in this classification are treated uniformly, a statute is not invalid because it discriminates between different classes of judgment debtors or different kinds of judgments. See, 45 Am.Jur.2d Interest and Usury § 6 (1969). This classification, which separates contract breaches from tortfeasors, is certainly reasonable where the contract breacher is required to pay after judgment the same rate of interest that he initially contracted for, or alternatively, a judgment rate approximately equivalent to current interest rates for money lent. In contrast to this is the rate of interest on a judgment against a tortfeasor. This rate of interest is neither directly nor indirectly related to current interest rates for money lent, and therefore should not necessarily be based on the current interest rates.

By researching the statutes of the fifty states, it was found that twenty-four states<sup>1</sup> have separate rates of interest for particular types of judgments. Examples of these statutes are provided below:

[Tex. Rev. Civ. Stat. Ann. art. 5069-1.04 \(Vernon\) \(Supp. 1978\):](#)

All judgments of the courts of this State shall bear interest at the rate of nine percent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than nine percent per annum, in which case the judgment shall bear the same rate of interest specified in such contract, but shall not exceed ten percent per annum, from and after the date of such judgment.

[Utah Code Ann. § 15-1-4 \(1973\):](#)

Any judgment rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties, which shall be specified in the judgment; other judgments shall bear interest at the rate of eight percent per annum.

[N. D. Cent. Code § 28-20-34 \(1974\):](#)

Interest shall be payable on judgments recovered in the courts of this state at the same rate as is provided in the original instrument upon which the action resulting in the judgment is based, which rate shall not exceed the maximum rate provided in section 47-14-09. If such original instrument contains no provision as to an interest rate, or if the action resulting in the judgment was not based upon an instrument, interest shall be payable at the legal rate as provided in section 47-14-05.

[Okla. Stat. Ann. tit. 12, § 727 \(West\) \(Supp. 1978\):](#)

**\*2** All judgments of courts of record shall bear interest, at the rate of ten percent (10%) per annum, from the date of rendition, provided that:

1. When a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the journal entry of judgment; however, said rate shall not exceed the lawful rate for such obligation; or
2. When a verdict for damages by reason of personal injuries is accepted by the trial court, the court in rendering judgment shall add interest on said verdict at the rate of six percent (6%) per annum from the date the suit was commenced to date of verdict.

[Mo. Ann. State. § 408.040 \(Vernon\) \(1979\):](#)

Interest shall be allowed on all money due upon any judgment or order of any court, from the day of rendering the same until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than six percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear six percent per annum until satisfaction made as aforesaid.

[Neb. Rev. Stat. § 45-103 \(1974\):](#)

Interest on all decrees and judgments for the payment of money shall be from the date of the rendition thereof at the rate of eight dollars upon each one hundred dollars annually until the same shall be paid; Provided, if said judgment or decree shall be founded upon any contract, either verbal or written, by the terms of which a greater rate of interest, not exceeding the amount allowed by law, than eight percent shall have been agreed upon, the rate of interest upon such judgment or decree shall be the same as provided for by the terms of the contract upon which the same was founded.

[Mich. Comp. Laws Ann. § 600.6013 \(Supp. 1979\):](#)

Interest shall be allowed on any money judgment recovered in a civil action, such interest to be calculated from the date of filing the complaint at the rate of 5% per year unless the judgment is rendered on a written instrument having a higher rate of interest in which case interest shall be computed at the rate specified in the instrument if such rate was legal at the time the instrument was executed. In no case shall the rate exceed 7% per year after the date judgment is entered.

[Iowa Code Ann. § 535.3 \(Supp. 1979\):](#)

Interest shall be allowed on all money due on judgments and decrees of courts at the rate of seven cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding the maximum applicable rate permitted by the provisions of Section 535.2, which rate must be expressed in the judgment or decree.

Cal. Const. Code art. 15, § 1 (West) (Supp. 1979):

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The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

\*3 In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the state shall be 7 percent per annum.

N. M. Stat. Ann. § 56-8-3 (1978):

The rate of interest, in the absence of a written contract fixing a different rate, shall be six percent per annum, in the following cases:

- A. on money due by contract;
- B. on judgments and decrees for the payment of money when no other rate is expressed;
- C. on money received to the use of another, and retained without the owner's consent expressed or implied;
- D. on money due upon the settlement of matured accounts from the day the balance is ascertained;
- E. on money due upon open account, after six months from the date of the last item.

It is therefore my opinion that a statute providing for separate rates of interests on particular types of judgments would not only be constitutional but also legally feasible in view of the statutes of other states which provide this type of separate interest rates.

If I can be of any further assistance, please do not hesitate to contact me.

With kind personal regards, I am  
Very truly yours,

Richard B. Kale, Jr.  
Senior Assistant Attorney General

Footnotes

- 1 Arkansas, California, Florida, Georgia, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Texas, Utah, Washington and Wyoming.

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