

1978 WL 34620 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 28, 1978

***1 RE: South Carolina General Usury Statute**

Melton Kligman, Esquire
Richland County Bar Association
1408 Bull Street
Columbia, South Carolina 29201

Dear Mr. Kligman:

You requested an opinion as to the meaning of the phrase 'amount advanced' in the first proviso of S. C. Code Section 34-31-30. This office is limited to giving opinions to public officials. What follows, therefore, should be treated as an informal opinion.

The first proviso of Section 34-31-30 does not deal with loans secured by real estate mortgages. It provides a 10 per cent interest ceiling on loans over \$50,000 and up to \$100,000; 12 per cent on loans over \$100,000 and up to \$500,000; and no interest limit on loans exceeding \$500,000. Instead of the phrase 'loan amount,' the proviso uses the term 'amount advanced.'

You posed the following hypothetical question: 'If A and B contract for A to loan B the sum of \$600,000 at 14 per cent simple interest and A advances B the sum of \$105,000, what interest rate may A legally receive on the amount advanced?' It is axiomatic that the purpose of statutory construction is to give effect to the intent of the legislature. Therefore, the answer would depend on the terms of the entire loan contract, and circumstances attendant thereto.

Suppose the only real obligation that A has is to loan B \$105,000, then in my view the interest ceiling would be 12 per cent. On the other hand, if A is obligated to loan B the remainder by the terms of the contract, and the \$105,000 is merely the first payment of several which A is obligated to advance, the total sum advanced within the meaning of the act would be \$600,000 and the higher interest rate would be permissible.

I hope that this answers your inquiry.

With kindest regards,
Very truly yours,

Harry B. Burchstead, Jr.
Assistant Attorney General

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