

1975 WL 29578 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1975

***1 Re: Permissible Late Charges on Installment Student Loans**

Mrs. Beverly A. Lutz
Marketing Representative
Student Loan Servicing Center
First National Bank of Minneapolis
P. O. Box A 1577
Minneapolis, Minnesota 55480

Dear Ms. Lutz:

Your letter of February 20, 1975, to Mr. Robert C. Cleveland has been referred to this office for a reply to your question as to the permissible 'late charge' in South Carolina on installment loans.

I am unable to provide you with a definitive answer to this question, because at the present time there is no provision in the South Carolina Code specifically authorizing or prohibiting a 'late charge' on such installment loans. Moreover, my research has revealed no court decisions construing this legislative omission as being an intentional prohibition of 'late charges' or an unintentional oversight. In the past, this office has expressed the view that a reasonable 'late charge' was permissible on installment loans under Section 8-233, South Carolina Code of Laws (1962), if agreed to by the parties upon execution of the note in question. Likewise, South Carolina's recently enacted version of the UCCC, which amended in part Section 8-233, does not provide for 'late charges,' although legislation is pending which will limit the permissible delinquency charges. Generally, this proposed provision would limit a delinquency charge for a loan not paid within ten days after its scheduled due date to an amount not exceeding the greater of:

(1) the amount, not exceeding five dollars, which is five per cent of the unpaid amount of the installment, or

(2) the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent (proposed Section 3.204.1)

This provision follows generally the UCCC version on delinquency charges. While courts will often adopt the proposed uniform code provision as the common law rule when no statute has been enacted, there is no guarantee that this will be the case here.

The Attorney General's office is restricted by law to advising the departments and agencies of state government and its political subdivisions. Therefore, I cannot provide you with an official opinion, and this letter should not be construed as such. Hopefully, a definitive answer will be forthcoming from the legislature in the near future.

With cordial best wishes, I remain
Very truly yours,

Richard B. Kale, Jr.
Assistant Attorney General

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