

1975 S.C. Op. Atty. Gen. 197 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4128, 1975 WL 22424

Office of the Attorney General

State of South Carolina

Opinion No. 4128

September 23, 1975

*1 The prohibition against variable interest rates under Section 8–3, S. C. Code (1962), as amended, applies to construction loans in excess of \$50,000.00 if the loan is secured by a first mortgage on real estate.

TO: Representative Robert E. Kneece
Chairman
Judiciary Committee

QUESTION PRESENTED:

Does Section 8–3, S. C. Code (1962), as amended, prohibit the charging of a variable interest rate on a construction loan in excess of \$50,000.00?

STATUTES AND CITATIONS INVOLVED:

Section 8–3, S. C. Code (1962), as amended.

[Jones v. South Carolina State Highway Department](#), 247 S. C. 132, 146 S. E. 166, (1966).

West's South Carolina Digest § 181(1)

DISCUSSION:

Section 8–3, S. C. Code (1962), as amended, establishes the maximum legal interest rate on a loan secured by a first mortgage on real estate and provides, *inter alia*,
... loans made pursuant to the provisions of this paragraph shall not be subject to variable interest rates.

Therefore, if a construction loan is secured by a first mortgage on real estate, it would be necessary for the loan to meet the requirements of Section 8–3. The South Carolina Supreme Court has consistently followed the rule of construction which provides that where the terms of a statute are clear and not ambiguous, there is no reason for construction, and the court must apply statutes according to their literal meaning. See, [Jones v. South Carolina State Highway Department](#) 247 S. C. 132, 146 2d 166 (1966); and cases cited generally in West's, South Carolina Digest § 181(1). In this case the meaning of the provision on variable interest rates is so clear and unambiguous that it is manifest that it would apply to all loans, including construction loans, which are secured by a first mortgage on real estate.

CONCLUSION:

Variable interest rates are prohibited on any loan coming within the purview of Section 8–3, S. C. Code (1962), as amended, i.e. loans secured by a first mortgage on real estate. This restriction clearly applies even if the loan is a construction loan.

Richard B. Kale, Jr.
Assistant Attorney General

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