1974 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3820, 1974 WL 21326

Office of the Attorney General

State of South Carolina
Opinion No. 3820
July 2, 1974

***1** Honorable Ramon Schwartz, Jr.
Member
House of Representatives
Law Range
Sumter, SC 29150

Dear Mr. Schwartz:
You have asked whether or not national banks in South Carolina Can charge an interest rate of one per cent in excess of the current discount rate under the authority of Title 12 U.S.C. § 85.

Title 12 of U.S.C. § 85 provides in part:
Any association may take, receive reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, a rate so limited shall be allowed for associations organized or existing in any such State under this chapter. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater . . . (emphasis added)

Section 85 creates three alternative rates. A national bank may charge either what a State chartered bank is charging, or 1 per cent above the discount as specified, or if the applicable laws of the state do not fix a rate a national bank may charge seven percent per annum.

The earliest expression of the legislature intent behind the national banking act is found in Tiffany v. Bank of Missouri 85 U.S. 409, 21 L.Ed. 862 (1874) in which the Supreme Court stated:
. . . National banks have been national favorites. They were established for the purpose, in part, of providing a currency for the whole country, and in part to create a market for the loans of the general government. It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the states, or to ruinous competition . . . at p. 413

From the Tiffany decision it is obvious that the national banking act was to protect national banks and give them the opportunity to compete with state banks. The case law which has reviewed Title 12, Section 85 does not direct itself to the question posed within. The comptroller of the Currency has, however, held that a national bank could charge the one per cent above discount. [1] The Comptroller's opinion cited a Pennsylvania lower Court ruling to this effect. National Central Bank v. Heindel (Civ. Actions Nos. 2064, 2065, 2066 and 2067. May Term 1970). This unreported decision is apparently the only Court interpretation of the 1 per cent above discount clause of Section 85.

***2** 12 USCA Section 85 clearly provides that the national bank has the choice of charging either the maximum a state bank may charge under State law or the one percent above discount, whichever is the greater. It is therefore, the opinion of this office that a national bank may choose to charge the one per cent above discount.

Very truly yours,

Patricia O. Brehmer
Assistant Attorney General

Footnotes

1 Letter dated October 2, 1973, addressed to Richard E. Weinman, Hamilton, Ohio.

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