

1974 WL 28114 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 29, 1974

*1 Honorable Jimmy L. Nartin
Senator
1611 Augusta
West Columbia, SO 29169

Dear Senator Martin:

You have asked whether or not the guarantors of a note, given by a corporation which is prohibited by Section 8-10 from pleading usury as a defense, can avail themselves of the defense of usury.

A typical factual situation would be where a corporate borrower has its note to the lender guaranteed by individuals. The corporate borrower is prohibited from pleading usury under Section 8-10, 1962 Code of Laws of S. C. (as amended) but the question arises as to whether or not the individual guarantors of the corporation's note can plead usury against the lender.

It has repeatedly been held that the defense of usury is . . . personal to the principal and when it cannot be invoked by the corporate principal it cannot be invoked by the individual surety.' [Verson v. Hardt](#) 246 N.E. 2d 461, 107 Ill. App. 2d 480. See also 6 A.L.R. 586, 43 A.L.R. 1, 63 A.L.R. 2d 924. The defense of usury runs to the contract so that where there is a legal contract and the borrower is statutorily barred from pleading the defense of usury, the guarantor is also bound by his agreement and cannot avail himself of the defense. [6 A.L.R. 586](#)

If our office may be of further assistance please do not hesitate to call upon us.

Very truly yours,

Patricia O. Brehmer
Assistant Attorney General

1974 WL 28114 (S.C.A.G.)

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.