

1974 S.C. Op. Atty. Gen. 269 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3856, 1974 WL 21358

Office of the Attorney General

State of South Carolina

Opinion No. 3856

September 9, 1974

*1 L. H. Jennings, Jr., Esquire

P. O. Box 665

Union, SC 29379

Dear Mr. Jernings:

You have asked whether or not a bank may charge a full nine per cent on the entire amount on a construction loan, whereby the loan contract provides that the monies are to be deposited into an escrow account and withdrawn in the future as the construction progresses and to be withdrawn only over the signature of both the bank and the individual.

Section 8-3, 1962 Code of Laws of S. C., (as amended) provides:

No greater interest . . . shall be charged, taken, agreed upon or allowed upon any contract arising in this State for the hiring, lending or use of money . . .

Provided, further that until and including June 30, 1975, in the case of loans secured by first mortgages on real estate in an amount of not more than fifty thousand, the rate of interest shall not exceed nine percent . . .

A contract providing for the ‘. . . hiring, lending or use of money . . .’ is covered by Section 8-3. While the funds are in the escrow account the borrower does have the ‘use’ of the monies provided he fulfills his part of the contract, i.e. completing the construction as scheduled and paying the interest. It would therefore appear that if the loan was not for more than fifty thousand dollars and is secured by a first mortgage on real estate a rate of nine percent simple interest could be charged.

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

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