

1973 WL 26646 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 7, 1973

\*1 O. Wayne Corley, Esquire  
Attorney at Law  
Suite One—Ninth Floor  
Jefferson Square  
Columbia, South Carolina 29201

Dear Mr. Corley:

The question that you have posed is whether or not a South Carolina corporation, or other recognized entity, may make loans to an individual for the purpose of financing lots and charge a seven percent add-on for such loans. These loans would be repayable in monthly installments over a period in excess of three months.

Section 8-233, South Carolina Annotated (Supp. 1971) establishes the right of '... banks, banking institutions and other lending agencies ...' to make such charges.

There are three requirements in order to make loans and charge the add-on rate. First the lender, if not a bank or banking institution, must be a lending agency. Registrants under the Consumer Finance Act are considered such lending agencies. 1967-68 Op. Att'y Gen., No. 2538, p. 230. By definition lending is a transaction 'creating customary relation of borrower and lender, in which money is borrowed for fixed time on borrower's promise to repay the amount borrowed at stated time in future with interest at fixed rate.' Blacks Law Dictionary, Lending or Loaning Money or Credit at p. 1047. Presumably one engaged in business for the purpose of lending will be considered a lending agency.

Secondly, the lender must not loan less than ten dollars. This should not be a problem where the loan is for the purchase of real estate.

Finally the loan must provide for repayment in installments of which there shall not be less than three. Your letter stated that the installments would be in excess of three monthly payments.

It is, therefore, the opinion of this office that such charges may be made.

The second question you have posed is whether or not such a lender would be subject to the requirements of Section 8-798, et seq., commonly known as the Consumer Finance Act.

The Act was designed to regulate and establish maximum rates for the lender who makes more than ten loans a year, lending directly to an individual, in amounts of less than seventy-five hundred dollars.

Section 8-800.10(h) does prohibit licensees under the Act from receiving charges authorized by the Act, on a loan for the purchase price of real estate which is secured by a purchase money lien or interest in the land. These restrictions and regulations apply not only to licensees but also to registrants under the Section 8-800.19.

If a registrant was to make a loan for real estate secured by a purchase money lien, said loan could not be made in the lender's capacity as a registrant so that the charges authorized by the Consumer Finance Act would not be available. In such instance the lender would have to resort to the seven percent add-on of Section 8-233.

Unless a lender is making these small direct loans there is no need to register under Section 8-800.19.

Very truly yours,

Patricia O. Brehmer

\*2 Assistant Attorney General

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