

1973 S.C. Op. Atty. Gen. 276 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3606, 1973 WL 21061

Office of the Attorney General

State of South Carolina

Opinion No. 3606

August 23, 1973

**\*1 A 1 ½ percent monthly charge on the past due unpaid portion of a credit account is valid under the laws of this State.**

President

South Carolina Board of Examiners in Optometry and Opticians

You have requested that this office advise you as to whether a 1 ½ percent monthly charge on the past due unpaid portion of a credit account is valid under the laws of this State. Section 8–3 of the Code of Laws of South Carolina, 1962, 1971 Cumulative Supplement states

No greater interest than six percent per annum shall be charged, taken, agreed upon or allowed upon any contract arising in this State for the hiring, lending or use of money or other commodity, either by way of straight interest, discount or otherwise, except upon written contract wherein by express agreement, a rate of interest not exceeding eight percent may be charged.

The prohibition contained in the above statute is that interest may not be charged in excess of eight percent. Interest has been defined as, ‘the compensation allowed by law or fixed by the parties for the use or forbearances or detention of money.’ *Black's Law Dictionary*. Usury, which basically is a charge of interest in excess of that allowed by law, has been found to contain the four following elements: (1) A loan of money or forbearance of debt. (2) The principal shall be payable absolutely. (3) The extraction of a greater amount of interest or profit than that allowed by law. (4) The presence of intention to evade the law at the inception of the transaction. The 1 ½ percent charge is not interest under the aforementioned authorities, in as much as the amount paid is not done so either to obtain the loan of money nor to obtain forbearance on collection of the amount due. The 1 ½ percent charge is basically a penalty upon those who do not pay within the prescribed time, and therefore is not considered to be a violation of Section 8–3.

It is therefore the opinion of this office that the imposition of the late payment charges in the amount of 1 ½ percent, do not violate the usury statutes of the laws of this State.

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