

**OPINION  
68-108**

March 18, 1968 (OPINION)

Mr. H. L. Thorndahl, Jr.

State Examiner

RE: Interest - Banks - Loan in Other State

This is in reply to your letter of March 11, 1968, in which you ask if a North Dakota state bank may participate in a loan originating in Minnesota, which loan pays an interest of 7 1/2 percent.

Section 6-03-62 of the North Dakota Century Code provides;

INTEREST ON LOANS - RATE. An association may demand and receive for loans on personal security, or for discounting notes, bills, or other evidences of debt, such rate of interest as may be agreed upon, not exceeding the amount authorized by law to be contracted for, and it may receive such interest according to the ordinary usage of banking associations and for not more than one year in advance."

Section 47-14-09 of the North Dakota Century Code provides:

USURY - DEFINITION - MAXIMUM CONTRACT RATE - PROHIBITION. Except as otherwise provided by the laws of this state, no person, copartnership, association, or corporation, either directly or indirectly, shall take or receive, or agree to take or receive, in money, goods, or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action than seven percent per annum, and in the computation of interest the same shall not be compounded. No contract shall provide for the payment of interest on interest overdue, but this section shall not apply to a contract to pay interest at a lawful rate on interest that is overdue at the time such contract is made. Any violation of this section shall be deemed usury."

There is no doubt but that if the law of this state governs the interest rate on the loan in question a state bank may not participate in a loan the interest rate on which exceeds seven percent. We note section 6-03-62 specifies the interest rate may not exceed "the amount authorized by law to be contracted for." Presumably the law in Minnesota permits interest rates in excess of seven percent although we have not researched this question. In 91 C.J.S. 560, Usury, sec. 4(2) we find this statement:

. . . the problem is deciding whether or not the contract is usurious is largely one of ascertaining what law the parties had in mind in fixing their rights under the contract, and, if the parties to a contract of loan have in good faith contracted with reference to the law of a foreign state, such law, as far as it is not penal or remedial, will be enforced, even though such a course may result in enforcing a contract that could not

have been legally made in the state of the forum.

"The rule that the intent of the parties designates the governing law applies provided the intent is entertained in good faith, and not for the purpose of evading the usury laws of another state, is referable to a place where some important element of the contract has its situs, and is not contrary to the public policy of the forum, or to the rule that foreign penalties and remedies will not be enforced. Also the law with reference to which it is the purported intention of the parties to contract must have a real and not a mere fictitious connection with the subject matter of the transaction; but it is sufficient if some of the substantial elements of the loan contract have their situs in the jurisdiction, the laws of which it is intended shall govern."

Therefore, while we believe that in most instances a bank may not participate in a loan that calls for an interest rate higher than the legal North Dakota contractual rate, we are not prepared to say, as a matter of law, that in no instance may a bank participate in such a loan, since it is conceivable, under certain circumstances, that the interest rate of another state would apply and such interest rate might be higher than that of this state.

Your letter and the copies of letters accompanying do not present sufficient detailed information from which we can arrive at a definite conclusion. However, we trust the above discussion will set forth the basic law involved in this matter.

HELGI JOHANNESON

Attorney General