

**OPINION
68-114**

March 26, 1968 (OPINION)

Mr. H. L. Thorndal, Jr.

State Examiner

RE: Interest - Corporations - Exceptions

This is in reply to your letter in which you enclosed the following question and asked for an opinion thereon. Does section 10-19-04(8) create an exception to section 47-14-09?

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

"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."

It should be noted that the language, "except as otherwise provided", quite obviously refers to provisions of law authorizing a specific rate of interest which is different than the one mentioned in section 47-14-09. For example, section 13-03-14 relates to small loan activities and under certain instances the rate of interest may be as high as two and one-half percent per month on an unpaid principal not exceeding \$250.00. The same section also sets forth other rates of interest for different amounts. Also, section 51-13-03 of the North Dakota Century Code, which relates to retail installment sales which authorizes a rate of interest in excess of the amount permitted under section 47-14-09; and also section 51-14-03 which pertains to revolving charge accounts which authorizes a rate of interest not to exceed one and one-half percent per month on the outstanding indebtedness.

The language, "except as otherwise provided", we believe, has reference to such specific instances where the legislature has authorized a rate of interest in excess of the maximum allowed under section 47-14-09.

Section 10-19-04(8) of the North Dakota Century Code provides as follows:

"GENERAL POWERS. - Each corporation shall have power:

* * *

8. To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

* * *."

It should be noted that no particular reference is made to any rate of interest. It is also noted that this section merely authorizes the payment of a rate of interest as the corporation may determine.

Section 47-14-09 of the North Dakota Century Code prohibits the charging of a higher rate of interest than seven percent. (See also section 47-14-11, which imposes a penalty for taking or charging a higher rate of interest.) Even if section 10-19-04 could be construed as an exception to section 47-14-09, it still does not permit a corporation to take or charge a higher rate of interest. Section 10-19-04 merely permits a corporation to pay a rate of interest as it may determine. Without concluding that section 10-19-04 is an exception, it does not authorize the corporation to charge but only to pay interest.

The prohibition to charge a rate of interest beyond seven percent is still in effect. Consequently the corporation would first have to find a person or corporation within a foreign jurisdiction which permits a higher rate of interest and transact business under and within the laws of such jurisdiction. In such transactions it would have to satisfy all of the requirements to be within the laws of the foreign jurisdiction.

We are obliged under the rules of construction to reconcile different statutes on related subjects, and only if they are irreconcilable should we entertain repeal by implication or amended by implication, on which statute prevails. Section 10-19-04 can be reconciled with the provisions of section 47-14-09 by concluding that the corporation may determine the rate of interest within the limitations set by law when concerned with transactions under the laws of this state. If the transactions are under the laws of another state, the laws of such state would be controlling as to the rate of interest which may be charged.

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