

**OPINION
68-32**

August 6, 1968 (OPINION)

Mr. H. L. Thorndahl, Jr.

State Examiner

RE: Banks - Rate of Interest - Credit Cards

This is in response to your letter in which you ask if it is legal for a bank to charge 1 1/2 percent interest per month as a service charge on a credit card plan.

The powers and authority of banks are set out in Section 6-03-02 of the North Dakota Century Code. Under Subsection 9 thereof, it is conceivable that a bank might engage in some form of credit card activity, however, as to the interest rate, we come to a different conclusion. Section 6-03-62 of the North Dakota Century Code provides as follows:

"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."

The ordinary rate of interest is set forth in Section 47-14-09 of the North Dakota Century Code and, in effect, provides that the legal rate of interest, unless otherwise specifically provided, shall not exceed 7 percent. From this we must conclude that a bank is authorized to charge interest at a rate not to exceed 7 percent, unless it comes within certain exceptions, with which we are not concerned here.

The rates of interest which may be charged for activities such as installment purchases are provided for in Chapter 51-13 of the North Dakota Century Code but do not apply to banks. The bank may participate in a retail installment contract by purchasing same from the seller under such terms and conditions and for such price as may be mutually agreed upon. (Section 51-13-02, Subsection 9.a.) This would be comparable to purchasing accounts receivable.

We have also examined the provisions of the Small Loans Act to determine whether or not a bank could resort to some of the provisions contained therein, but Subsection 2 of Section 13-03-03 excludes banks and others from coming within the provisions of such Act. It therefore appears that a bank could not use the interest rates as specified therein. Neither do we believe that a bank can, in any manner, qualify under the provisions of Chapter 51-14 pertaining to revolving charge accounts because the Act contemplates that it be limited to a retail seller. We do not believe that under the present laws on operations of banks that a bank can be considered a retailer as such term is used in Chapter 51-14. We have also

examined Chapter 13-04, but same does not contain an interest rate of 1 1/2 percent per month.

It is therefore our opinion that a state-chartered bank may not charge an interest rate of 1 1/2 percent per month under any circumstances, and this would include credit card activities.

HELGI JOHANNESON

Attorney General