

**OPINION
69-516**

March 25, 1969 (OPINION)

Honorable Frank A. Wenstrom

Senator

RE: Usury - Exemptions - Loans to Farmers

This is in response to your letter in which you state that House Bill No. 133 as passed by the Forty-first Legislative Assembly has been signed by the governor and carried the emergency clause. You then ask whether or not the following provision of the Act applies to farmers and stockmen.

This section shall not apply to a loan made to a foreign or domestic corporation, or a cooperative corporation or association, nor to any business loan the principal amount of which amounts to more than \$25,000.00."

You also ask the following questions.

I've had three banks call all asking about loans to farmers or stockmen that would be made in excess of \$25,000.

1. Cattle man wants to borrow \$32,000 to buy cattle.
2. Grain farmer wants to borrow \$40,000 for general farming operations for the season.
3. Farmer-custom combiner wishes to buy four new combines. The loan would be in excess of \$35,000.

The same question pertains to all these loan requests. Does the eight percent rate ceiling govern the above loan requests or, is the rate ceiling off because the loans will be in amounts over \$25,000?"

It should be observed that the Act does not exempt all loans in excess of \$25,000.00 but only "business" loans. The term "business" as used in this Act is not a work of art. It therefore takes on its ordinary meaning.

Webster defines the word business as:

"busi'ness (biz'nes), n. (ME. business, bysiness, labor, diligence, from busy, busy.)

1. employment; occupation; profession; calling; vocation; means of livelihood; that which occupies the time, attention, and labor of men, for the purpose of profit or improvement; as, his business was that of a merchant; the business of a banker.
2. commerce or trade in general; as, a good knowledge of

business.

3. in a theatrical sense, the work determined upon and arranged by the director for the action of a play.

Consider what scope the business of the scene gives to the actor's purpose. -Irving.

4. concern; right or power of interference; as, it was none of his business.
5. anxiety; care. (Obs.)
6. the state of being busy or actively employed. (Obs.)
7. a matter or affair; also, serious engagement; important occupation, as distinguished from trivial affairs; as, business before pleasure; life is a serious business.
8. a commercial or industrial establishment; store, factory, etc.
9. commercial practice or policy; as it is poor business to insult the customers.

business is business; sentiment, friendship, etc., cannot be allowed to interfere with profit-making.

to have no business; to have no right (to do something).

to make it one's business; to take the management of; to consider and act upon as a personal affair.

to mean business; to be determined; to be in earnest. (Colloq.)

to mind one's own business; to confine oneself to one's own affairs; to refrain from interference with the affairs of others.

Syn. - employment, calling, vocation, occupation, trade, profession, office, affair, matter, transaction."

It is thus readily noted that the word business has many variations of meaning. Generally it takes on its full true meaning from the context in which it is used. In House Bill No. 133 it appears that it was used to distinguish between a personal loan and a loan for a business or enterprise.

We are also mindful that the same legislature passed Senate Bill No. 137 relating to the repeal of the personal property tax and providing for a replacement tax. In section 2 of said Act one percent tax on income from the operation of a "business," trade or profession was imposed. The committee hearings and other discussion relating to the term "business" as used in that Act clearly illustrated that such term embraced farming and ranching within its meaning. We have no reason to believe that the legislature intended

the term to take on a different meaning in House Bill No. 133. The term business has been judicially defined to include farming. (See: Bowles v. Silverman 57 F. Supp. 990; Bowles v. Rock 55 F. Supp. 865; Tucker v. Wallace 3 P2d. 404; O'Neil v. United Producers and Consumers Co-op 113 P2d. 645.)

It also appears that the purpose for which a loan is made is significantly important. For example, if a husband and wife were to make a loan in excess of \$25,000.00 and the purpose of the loan was to carry on a business, such loan would then come within the exemption. If the loan, however, was made to purchase a private home or house, such loan would not be considered a business loan and would not be exempt.

It is our opinion that farming or ranching or the activities normally associated with a farmer or stockman come within the term business and that a loan in excess of \$25,000.00 would be exempt under the provisions of House Bill No. 133.

It should be noted that the rate of interest permitted to be charged under section 47-14-09 which is amended by House Bill No. 133 is three percent per annum higher than the maximum rate of interest payable on deposits as authorized by the State Banking Board under section 6-03-63. The Act provides:

47-14-09. 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 three per cent per annum higher than the maximum rate of interest payable on deposits authorized by the state banking board under section 6-03-63, but that in any event the maximum allowable interest rate ceiling shall not be less than seven per cent, and in the computation of interest the same shall not be compounded. This section shall not apply to a loan made to a foreign or domestic corporation, or a cooperative corporation or association, nor to any business loan the principal amount of which amounts to more than \$25,000.00. 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."

In restating the pertinent provision we would have the following: The maximum rate of interest shall not be higher than three percent above the maximum rate of interest payable on deposits as authorized by the State Banking Board under section 6-03-63 or seven percent per annum whichever is the greater, but the computation of such interest shall not be compounded.

We have no official notification, but we are informed by the state examiner that the present interest rate on deposits is five percent. On such basis the maximum interest chargeable per annum would be eight percent. However, such maximum interest rate does not apply to

a business loan in excess of \$25,000.00 or to a loan made to a foreign or domestic corporation or a cooperative corporation or association. The interest rate would be open to negotiation.

As to questions 1, 2, and 3 the answer to each question is that same constitutes a business loan and would come within the exemption of the interest rate which may be negotiated.

HELGI JOHANNESON

Attorney General