

**OPINION
69-519**

July 31, 1969 (OPINION)

Mr. H. L. Thorndal

Commissioner of Banking

and Financial Institutions

RE: Usury - Interest Rate - Established by State Banking Board

This is in response to your letter in which you state the following:

The last legislature amended section 47-14-09, North Dakota Century Code, 'Usury ---'. The maximum rate is '--- three percent per annum higher than the maximum rate of interest payable on deposits authorized by the State Banking Board under section 6-03-63, ---'.

Section 6-03-63, North Dakota Century Code, authorizes the State Banking Board to set the rates banks may pay on deposits, between four and six percent. On July 1, 1967, the board set the maximum rate at five percent, which still prevails. The Federal Reserve Board authorizes member banks to pay up to six and one-quarter percent on Certificates of Deposit whose denominations are \$100,000.00 or over (subject to state law limitations).

A few of the larger banks in the state have had to turn away a few of these large C.D.'s deposits because of North Dakota's present five percent regulation. My question is --- if the State Banking Board authorized North Dakota banks to pay six percent on Certificates of Deposit whose denomination is \$100,000.00 and over, and kept all other certificates at five percent, would the usury rate stay at eight percent or would it go to nine percent?"

Section 47-14-09, which is the latest enactment on interest rates, provides as follows:

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 percent 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 percent, and in the computation of interest the same shall not be compounded. This section does 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 twenty-five thousand dollars. 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 is noted that any rate of interest on loans which is higher than three percent of the interest payable on deposits, except under certain conditions, is deemed usurious. The interest which may be charged on a loan is directly related to the interest rate authorized for deposits. It is further noted that the interest rate on loans can vary, depending on the purpose of the loan and the amount. It also makes an exception if the loan is made to a corporation or an association. The exceptions are found in the following sentence:

* * * This section shall not apply to a loan to a foreign or a domestic corporation, or a cooperative corporation or association, nor to any business loan the principal amount of which amounts to more than twenty-five thousand dollars.
* * *."

Section 6-03-63 relates to the interest payable on deposits. It provides as follows:

6-03-63. INTEREST ON DEPOSITS - RATE PAYABLE - MISDEMEANOR. No state banking association shall pay interest on deposits, directly or indirectly at a greater rate than four percent per annum unless authorized by the state banking board to pay a greater rate, which in no case shall exceed six percent per annum. The board may grant permission to pay a rate of interest exceeding four percent on deposits, but the rate so granted shall be uniform within any county. Any officer, director, or employee of any association violating the provisions of this section, directly or indirectly, is guilty of a misdemeanor."

It should be noted that the rate of interest on deposits may, in no event, exceed six percent per annum. It is further noted that such provisions relate to deposits as a whole. It does not distinguish between deposits in different amounts.

While section 47-14-09 permits a varying interest rate, depending on the purpose, amount and the person or corporation making the loan, section 6-03-63 does not differentiate between amounts or purposes of the deposit, nor does the latter section make a differentiation as to the depositors.

It is therefore our opinion that the board may not allow a different interest rate for deposits in denominations of \$100,000.00 or more and leave the rate of interest on other certificates of deposits at the regular rate. It is our further opinion that the rates of interest allowed for deposits must apply to all deposits until such time as the legislature may authorize the State Banking Board to designate a different interest rate on deposits, depending on the amount on each deposit.

HELGI JOHANNESON

Attorney General