

**OPINION
69-521**

May 28, 1969 (OPINION)

Honorable Clark J. Jenkins

Representative, 21st District

RE: Usury - Interest Rates - Investment

This is in response to your letter in which you refer to House Bill No. 133, which amends section 47-14-09 of the North Dakota Century Code. You also refer to the opinion issued to the Honorable Frank A. Wenstrom, State Senator, dated March 25, 1969. You then submit questions which you believe were not answered in the aforementioned opinion. You specifically ask for an opinion as to whether or not the loan which is used for investment purposes, such as building a 24-plex for rental purposes, would constitute a business loan and be exempt from the interest rate if same is in excess of \$25,000.00.

You also ask what is the ruling where a person secures a loan which is to be used to construct or purchase an apartment building which will be used partially for his own residence and partially for residential (rental) purposes.

The pertinent provisions of House Bill No. 133 are as follows:

"* * * 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 * * *."

The purchase of property for investment purposes would clearly fall within the term "business" as such term is normally understood. The investment can be in various forms. It is therefore our opinion that a loan made for investment purposes and is in excess of \$25,000.00 would not be subject to the interest rate as specified in House Bill No. 133.

An apartment house used for rental purposes would constitute a business and money borrowed to invest in such, if same exceeds \$25,000.00 would come within the exception as stated herein.

As to the situation where an individual makes a loan for the construction or purchase of an apartment building, which will be used in part as a residence and in part for rental purposes, a complex, difficult problem arises, particularly in endeavoring to relate this transaction as a business activity or a personal loan. The very nature of such arrangements contemplates an entwined relation. Unfortunately the law in question is silent in this respect. The North Dakota Century Code contains statutes which provide for a division of property for tax purposes but we cannot apply this principal to the present situation. We therefore have the most difficult, if not the most impossible, task to unravel or resolve which portion of the loan would be "business" and which portion would be for "residential purposes and nonbusiness."

This can be likened to the Gordian knot, for which a legal sword is presently not available.

We must assume that the legislature by not providing for a partition must have intended that if the loan is not all for "business", the exemption would not apply.

It is therefore our opinion that any loan in excess of \$25,000.00 must be for business in its entirety before it can qualify for the exemption. It is our further opinion that loans made for personal residential purposes or for personal consumption purposes - tax loans, vacation loans, educational loans, and loans to pay for sickness or hospitalization - are all "nonbusiness" loans and as such would be subject to the rate of interest prescribed in House Bill No. 133.

HELGI JOHANNESON

Attorney General