

**OPINION
69-522**

April 28, 1969 (OPINION)

The Honorable M. F. Peterson

Superintendent of Public Instruction

RE: Usury - Rate of Interest - School Bus Equipment

This is in reply to your letter of April 24, 1969, concerning section 15-34-18 of the North Dakota Century Code and House Bill 133 enacted by the 1969 Legislative Assembly. You ask for our opinion relative to the rate of interest and the probable conflict between section 15-34-18 and section 47-14-09 of the North Dakota Century Code, as amended by House Bill 133.

Section 15-34-18 of the North Dakota Century Code provides:

SCHOOL BOARDS' AUTHORITY TO PURCHASE SCHOOL BUS EQUIPMENT. School boards shall have the power to purchase a bus body, a chassis, or a complete motor bus. Such bus body, chassis, or complete motor bus shall meet the standards set up by the superintendent of public instruction and the highway commissioner. School boards shall be required to advertise for bids in accordance with the provisions of section 15-47-15. School boards may use money in the general fund to purchase a bus body, a chassis, or a complete motor bus on the installment plan, provided that the payment of such plan shall not extend over a period greater than four years, and that the interest on the unpaid balances shall not exceed four percent. Such interest shall be straight interest on unpaid balances."

Section 47-14-09 of the North Dakota Century Code, as amended by House Bill 133 of the 1969 Legislative Assembly, provides in part:

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 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. * * *."

Prior to the enactment of House Bill 133, this section provided a flat seven percent per annum rate of interest.

The question, of course, is whether the rate of interest permitted on

contracts executed under section 15-34-18 is governed by section 47-14-09, as amended by House Bill 133 of the 1969 Legislative Assembly.

It is a common rule of statutory construction that a specific statute supersedes a general statute governing the same matter. See, e.g., *Northwestern Savings & Loan Association v. Baumgartner*, 136 N.W.2d. 640 (ND 1965). This has been codified in North Dakota law. Thus section 1-02-07 of the North Dakota Century Code provides:

PARTICULAR CONTROLS GENERAL. Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the two shall be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest legislative intent that such general provision shall prevail."

Section 15-34-18 is a special statute concerning purchase of school bus equipment. It provides an interest rate of not to exceed four percent if such equipment is purchased on the installment plan. Section 47-14-09, as amended by House Bill 133, is a general statute pertaining to interest rate generally. The two statutes, insofar as interest rates on school bus equipment are concerned, are irreconcilable. However, section 47-14-09, as amended, being a general statute, does not supersede the special statute governing installment contracts for school buses.

While the interest rate on these contracts may not seem realistic at this time (we express no opinion on that statement) we must also note that section 15-34-18 was enacted in 1947, sometime subsequent to the last enactment of section 47-14-09 in 1935. Therefore, even when the interest rate permissible under section 47-14-09 was seven percent, the interest rate under section 15-34-18 was four percent and it was not contended that the seven percent interest rate was applicable to contracts entered into under the provisions of section 15-34-18 since section 15-34-18 was enacted much later in time. If section 47-14-09 was not applicable to these contracts when the rate of interest was seven percent, an amendment to that section permitting a higher rate of interest would not now make the statute applicable to such contracts unless the amendment specifically so provided. House Bill 133 does not contain any such specific provision.

We would also note it is not necessary to rely upon rules of statutory construction in determining this matter since section 47-14-09, as amended, by its own terms states "except as otherwise provided by the laws of this state" the interest rate shall not exceed 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. As we have noted section 15-34-18 is a law of this state which does provide otherwise with regard to interest on installment contracts for the purchase of school bus equipment by school districts. By its own provisions section 47-14-09 is not applicable to contracts entered into under the provisions of section 15-34-18.

It is therefore our opinion the permissible rate of interest with regard to contracts for the purchase of school bus equipment on the installment plan under the provisions of section 15-34-18 is limited to four percent and that the provisions of section 47-14-09, as amended by House Bill 133 of the 1969 Legislative Assembly, are not applicable to such contracts.

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