

**OPINION
72-468**

June 9, 1972 (OPINION)

Mr. Rodney S. Webb

State's Attorney

Walsh County

RE: Usury - Exemptions - PCA

This is in response to your letter in which you call our attention to the Farm Credit Act of 1971 and then make reference to the opinion of this office dated March 1, 1972, in which we stated that it was our understanding that the P.C.A. is not an instrumentality of the United States Government. You ask us in view of this additional information to review the previous question, and issue an opinion on the question whether or not production credit associations are exempt from the North Dakota usury law, Section 47-14-09 of the North Dakota Century Code as amended.

Section 2.10 of Part B of P.L. 92-181 in part and which is material provides as follows:

"Each production credit association chartered under section 20 of the Farm Credit Act of 1933, as amended, shall continue as a federally chartered instrumentality of the United States.
* * *

Subsection b of Section 2.15 of Part B of P.L. 92-181 provides in part as follows:

"Loans authorized in subsection (a) hereof shall bear such rate or rates of interest as are determined under regulations prescribed by the board of the bank with the approval of the Farm Credit Administration, and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such regulations. * * *"

The same subsection continue to provide that in setting rates and charges it is the objective to provide the money at the lowest reasonable cost on a sound business basis taking into account the cost of the money to the association and other related items.

Section 2.17 of Part B of P.L. 92-181 in part provides:

"Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligation issued by such associations shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or thereafter imposed by the United States or any State, territorial, or local taxing authority. * * *"

Section 6-03-50 of the North Dakota Century Code in effect provides

that the limitation of interest rates does not apply to loans or investments made pursuant to the provisions of Section 6-03-47, 6-03-48 and 6-03-49.

Section 6-03-47 as amended provides as follows:

"INVESTMENT IN LOANS AND OBLIGATIONS SECURED BY FEDERAL OR STATE GOVERNMENT. Banks, trust companies, the Bank of North Dakota, building and loan associations, companies, and other organizations in this state whose mortgage lending is regulated by law, or that are duly qualified federal housing administration mortgagees, are authorized to make, buy or sell any loan, advances of credit, and obligations representing loans and advances of credit that are insured or guaranteed, or where there is a commitment to insure or guarantee, in part or in full, or conditionally by the United States, its instrumentalities, this state, or its instruments."

It is noted that the amended version contains the following:

"and other organizations in this state whose mortgage lending is regulated by law, * * *"

We do not believe it is necessary to determine whether or not the quoted language applies only to regulations by the State of North Dakota or applies to any regulation by another state or the federal government. It does appear convincing that production credit associations chartered under the Farm Credit Act of 1933 as amended are instrumentalities of the United States.

We must also recognize that P.C.A.'s are authorized by federal law to set the rate and charges for loans. It would thus appear that a state law could not proscribe the setting of charges and rates for loans in contradiction to the authority granted by an act of Congress. We must recognize the supremacy of the federal acts in this respect.

We are further impressed that obligations of the P.C.A. are instrumentalities of the United States and that its notes and debentures and other obligations issued by such associations are exempt from state taxes except surtaxes, estate, inheritance and gift taxes.

Taking into account the statutory provisions mentioned above, it is our opinion that production credit associations are not governed by the usury statutes of this state, specifically Section 47-14-09. In this respect, the opinion issued on March 1, 1972, is accordingly modified.

P.S. Our U.S.C.A. service does not contain the codification of P.L. 92-181. It is our understanding that same is codified as 12 U.S.C.A. 2001 through 2259.

HELGI JOHANNESON

Attorney General