

**OPINION
74-10**

March 18, 1974 (OPINION)

The Honorable Jay Schultz
State Senator
210 Arikara East
Bismarck, ND 58501

Dear Senator Schultz:

This is in response to your letter in which you call our attention to Section 6-03-63 of the North Dakota Century Code and Chapter 28-32 of the North Dakota Century Code.

You then ask for a formal opinion on the following questions:

1. Is it legal for banking associations in North Dakota to pay more than six percent (6 percent) per annum on deposits?
2. Is the State Banking Board required to follow the Administrative Agencies Practices Act in promulgating any rule or regulation with respect to the payment of interest on deposits by banking associations in North Dakota?

Section 6-03-63 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."

The pertinent provision of this section as pertaining to your question is the phrase "which in no case shall exceed 6 percent per annum". The other language to pay interest directly or indirectly does not relate specifically to the rate of 6 percent per annum, but cautions and prohibits using devious means to circumvent the maximum rate allowed. The term "per annum" is not the same as annual rate of interest. It is a phrase or term used to fix or designate the rate of interest. By way of example, a rate of 1 percent per month or .001 percent per day or any other expression is used to identify, fix and designate the rate of interest. In this instance the term 6 percent per annum is used to specify the rate of interest. It is not necessarily the same as stating the time or period of payment, nor does it express or mean "rest period".

There are several types of interest. Simple interest is straight interest computed on the principal from the time interest is to commence to the time of payment or judgment. Compound interest is

defined in Section 1-01-36 of the North Dakota Century Code and provides as follows:

"1-01-36. COMPOUND INTEREST - DEFINITION. The words 'compound interest' shall mean interest added to the principal as the former becomes due and thereafter made to bear interest."

Annual interest is simple interest figured on each year's unpaid interest from the time it becomes due to the date of judgment and at a rate provided by the terms of the contract.

The foregoing appear to be the common accepted terms relating to interest and are the three major types of interest. The term "annual interest" and its meaning has been recognized since at least 1885 as disclosed in the case of Hovey v. Edminson, 22 N.W. 594. Annual interest in this regard has also been recognized as a middle course, between simple or straight interest and compound interest.

Section 6-03-63 does not contain any further limitations except 6 percent per annum. It does not in itself proscribe compound interest or annual interest. In this respect, it is noted that Section 47-14-09 which defines usury contains the prohibition against using compound interest. Thus, for usury purposes, interest may not be compounded. The usury statute provides amongst other things as follows: "In the computation of interest the same shall not be compounded".

North Dakota, as many other states, has enacted a law providing that when the rate of interest is prescribed by law or contract without specifying the period of time by which such rate is to be calculated, it shall be termed an annual rate. This, however, does not alter the main difference between the terms "per annum" and "annual interest". See First National Bank v. Kirby, 175 S.W. 926, 929. See also Words and Phrases Volume 3 Page 685 and Words and Phrases, Volume 22, beginning on Page 147 and 45 Am. Jur.2d. Interest and Usury beginning with Section 1, and Wieland v. Loon, 116 N.W.2d. 391.

Addressing ourselves to the specific question, we note you used the expression "to pay more than 6 percent per annum on deposits". The rate of interest by the very language of the section and as quoted in your question limits the rate of interest to 6 percent per annum, but it does not limit it to simple or straight interest or annual interest. It merely provides interest at 6 percent per annum.

It is therefore our opinion that the State Banking Board has authority to allow a rate of interest at 6 percent per annum to be compounded. The Board would have had authority to limit the interest to either simple interest at 6 percent per annum or annual interest at 6 percent per annum.

As to your second question, enclosed herewith is a response to a similar questions raised by Mr. Ellwein, the Commissioner of Banks and Financial Institutions. The answers given to his questions adequately answer your second question.

Sincerely yours,

ALLEN I. OLSON

Attorney General