

OPINION
57-161

February 21, 1957 (OPINION)

SALES

RE: Conditional - Interest Rates

We are in receipt of your letter of February 7, 1957, in which you request an opinion on the question of whether the "interest" rates, as computed in certain conditional sales contracts, are usurious.

Section 47-1409 of the North Dakota Revised Code of 1943 reads as follows:

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 seven percent per annum, and in the computation of interest the same shall not be compounded. 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."
(Emphasis supplied).

In construing the applicability of a similar statute to a conditional sales contract the Supreme Court of Washington, in the case of *Hafer v. Speath*, 156 P. 2d., 408, (Wash. 1945), held that:

The term 'forbearance' as used in the law of usury, signifies a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to pay a loan or debt then due and payable.
* * *Manifestly, under these definitions, there was no 'loan' involved in the transaction with which we are here concerned.
* * *There was no indebtedness existing between the parties to the conditional sales contract at the time the contract was made, nor did the contract provide for the exaction of any additional consideration for extending the time of payment of any installment thereafter becoming due and payable. The contract simply provided the terms upon which the vendor was willing to sell, and upon which the purchaser expressed his willingness to buy, * * *."

The Supreme Court of California, in *Upton v. Gould*, 149 P. 2d., 731, (Cal. 1944), came to the same conclusion in saying:

'Forbearance' is 'the act by which a creditor waits for the payment of a debt due him by the debtor after it has become due.' (citing cases) * * *The sale of property to be paid for in installments or in a lump sum at an agreed future date is

not under these decisions a forbearance of money."

It is to be noted that the 1933 session of the Legislature amended the usury statute so as to specifically regulate installment contracts, but after the decision in *Sayler v. Brady*, 248 N.W., 673 (N.D. 1933), which greatly limited the effectiveness of the statute, the 1933 session of the Legislature again amended the usury statute and omitted all reference to installment contracts. These facts also serve to make clear that the usury statute does not now apply to conditional sales contracts.

In the light of the foregoing, our conclusion is that section 47-1409 of the North Dakota Revised Code of 1943 has no application to bona fide conditional sales contracts.

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