

Therefore it is my opinion that the predecessor of the Department of Natural Resources had authority to grant an easement for a railroad right-of-way to Hanna Coal and Ore Corporation.

FRANK J. KELLEY,
Attorney General.

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USURY MORTGAGES.

Loans secured by mortgages insured by the Federal Housing Administration are exempt from the provisions of the Usury Law.

No. 4668

June 9, 1969.

Representative James Del Rio
House of Representatives
Lansing, Michigan

You have requested my opinion as to whether mortgages on properties located in the State of Michigan, insured by the Federal Housing Administration, are subject to Michigan's usury statutes.

Michigan's usury statute is set forth in Act 326, P.A. 1966, as amended by Act 266, P.A. 1968, being M.C.L.A. § 438.31, M.S.A. 1969 Cum. Supp. §19.15(1) et seq. Section 1 of said act reads as follows:

"That the interest of money shall be at the rate of \$5.00 upon \$100.00 for a year, and at the same rate for a greater or less sum, and for a longer or shorted time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest, not exceeding 7% per annum. This act shall not apply to the rate of interest on any note, bond or other evidence of indebtedness issued by any corporation, association or person, the issue and rate of interest of which have been expressly authorized by the Michigan public service commission or the corporation and securities bureau of the department of commerce, *or is regulated by any other law of this state, or of the United States*, nor shall it apply to any time price differential which may be charged upon sales of goods or services on credit. This act shall not be construed to repeal section 78 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.78 of the Compiled Laws of 1948." (Emphasis added.)

In *Straus v. Elless Co.* (1929) 245 Mich. 558, the Michigan Supreme Court interpreted the predecessor to the present usury statute. Plaintiffs brought a suit for the collection of monies owed on bonds secured by a mortgage bearing a rate including discounts in excess of the statutory limit with the approval of the Michigan Securities Commission. It was plaintiffs' position that because the statute specifically exempted from coverage bonds which had been expressly authorized by the Michigan Public Utilities Commission or the Michigan Securities Commission, such bonds were not open to the defense of usury. The following beginning

on page 562 of the opinion is pertinent to a later Michigan usury statute which is underlined above:

"Defendant contends that the statute is unconstitutional on two grounds:

"*First*, that it attempts delegation to the commission of legislative authority, authority to fix a rate of interest.

"Of the right to interest we quote from 15 R.C.L. p. 9:

"While both in England and in this country the legal right to take interest may be said to exist in legal contemplation as the creation of statutory enactment, yet as a general rule the statutes on the subject have been of a negative character, prohibiting the taking of an amount beyond the rate allowed, not declaring what character of demands shall draw interest, or requiring it to be paid, but leaving the question of what shall and what shall not draw interest to the contracting parties; or in other words, making the question whether interest is recoverable or not dependent upon agreement, and not law, the latter only limiting the amount of the recovery.'

"*Interest statutes are in derogation of the common law and must be strictly construed. 33 C. J. p. 187. A statute 'which modifies or repeals usury statutes is restorative of the common law, and by the same token, should be liberally construed.'* *Alston v. Mortgage Co.*, 116 Ohio St. 643 (157 N.E. 374).

"The effect of the quoted amendment is that there is no usury statute relating to those interest bearing securities regularly approved under the act by the commission except that the rate of interest thereon is left to agreement of the parties subject to approval or authorization of the commission. From a reading of the amendment of the usury statute, above quoted, and the statute above cited providing of approval or rejection of securities by the commission, it is at once apparent that respecting the rate of interest on such securities the commission does no more than to approve or to disapprove the rate contracted by the parties. This is not legislative; it is executive. See *Merrick v. Halsey & Co.*, 242 U.S. 568 (37 Sup Ct 227), sustaining the constitutionality of the Michigan blue sky law, above cited, as against the contention that it delegated legislative authority.

"*Second*, that the statute is class legislation.

"In 15 R.C.L. p. 19, it is said:

"Legislatures are considered to have very broad powers in regard to this subject, and their enactments as to rates of interest will not be held invalid as class legislation if it is possible to avoid such a holding.'

"The classification is sufficient if it is practical and reasonable. It is not reviewable unless it is palpably arbitrary and unreasonable. A lack of abstract symmetry does not matter. 2 Cooley's Constitutional Limitations (8th Ed), 813. See *Fountain Park Co. v. Hensler*, — Ind — (155 N.E. 465, 50 A.L.R. 1518), for full discussion of the question. For review of cases on statutory discrimination in interest

rates, see 2 L.R.A. (N.S.) 813, note; 27 L.R.A. (N.S.) 898, note, and 26 L.R.A. (N.S.) 1135, note.

"The purpose of the blue sky law is to protect the investing public from fraud. The interest statute in question relates to those interest-bearing securities which for issue or sale under the act require approval of the commission. The securities are generally of the class treated by investors as commercial paper and as securities for permanent investment. It is not unreasonable that the legislature denied, by statutory rule, the defense of usury to borrowers who, having the State's permission so to do, placed such securities in the hands of the investing public. We cannot hold that the statute is capricious, arbitrary, or unreasonable. The stated characteristics which serve as a basis of the classification are such as to show —

"an inherent difference in situation and subject-matter of the subjects placed in different classes which peculiarly requires and necessitates different or exclusive legislation with respect to them." *Fountain Park Co. v. Hensler, supra.*

"The classification embraces as near as may be all naturally belonging to the class.

"It is urged that the statute in question may be evaded or used to defraud. Interest or usury statutes frequently have been evaded and used oppressively. Borrowers in many instances have been required to pay not only usurious rates of interest but as well compensation to lenders for the risk of suffering penalty under the statute. The wisdom of such legislation has long been mooted. At one time in England all usury laws were swept out of existence. 15 R.C.L. p. 5. But they are now nearly if not quite universal. The wisdom of the legislation is not for the courts. That the law, in some instances, may be thwarted and that it will not operate with perfect equality, does not establish that it is unconstitutional. The statute is not unconstitutional. Plaintiffs' demands herein, therefore, are not open to the defense of usury." (Emphasis supplied).

In addition, there is a specific statute with reference to Federal Housing Administration mortgages, Act 2, P.A. 1935 [C.L. 1948 § 487.75 et seq.; M.S.A. 1957 Rev. Vol. § 23.181 et seq.]. Section 2 of said Act reads in its entirety as follows:

"No law of this state prescribing the nature, amount or form of security or deposit, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, or prescribing or limiting the investment in loans or advances of credit, shall be deemed to apply to security given, furnished or accepted or to loans, advances or credit, or purchases made, pursuant to section one (1) of this act: Provided, however, That nothing contained in this act, shall, directly or indirectly, authorize or permit any institution subject to its terms to invest in loans or make advances of credit or purchase securities pursuant to section one (1) hereof in an amount greater

than now authorized by the respective statutes which govern the organization and management of such institutions.'” (Emphasis supplied.) (M.C.L.A. § 487.751; M.S.A. 1957 Rev. Vol. § 23.182).

Construing the usury statute exemption and the specific statute exempting the Federal Housing Administration mortgages from laws prescribing or limiting interest rates upon loans or advances of credits results in the inevitable conclusion that the Federal Housing Administration mortgages are not subject to the usury statutes of this state.

It is clearly the intent of the Legislature to exempt from the usury statutes loans secured by Federal Housing Administration insured mortgages over which said federal agency has supervisory control under regulatory statutes of the United States.

FRANK J. KELLEY,
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EXECUTIVE ORGANIZATION:

Department of State Highways—Mackinac Bridge Authority

The department of state highways may maintain the Mackinac Bridge with its own forces or contract with independent contractors for said maintenance in accordance with procedures established by law.

The department of state highways, in the exercise of its powers to direct and supervise the Mackinac Bridge Authority, has control over budgeting to the extent that it may approve or disapprove an item of “public information” appearing in a budget of the authority.

No. 4653

July 10, 1969.

Mr. Henrik E. Stafseth, Director
Department of State Highways
Highway Building
Lansing, Michigan

In two brief letters you have requested my opinion on the following questions:

1. “‘Jurisdiction’ of the Mackinac Bridge, to a major degree, has been transferred from the Mackinac Bridge Authority to the Michigan Department of State Highways.
“In view of the above situation, we request your formal opinion on the question whether the Michigan Department of State Highways may maintain the Mackinac Bridge with its own forces or may contract for said maintenance.”
2. “The public information function is one of the items submitted by the Mackinac Bridge Authority in their budget for the approval of the Michigan Department of State Highways. The question is therefore posed, whether the Michigan Department of State Highways may approve the said program, in whole or in part.”