OPINION 60-143

August 16, 1960 (OPINION)

LEGISLATURE

RE: Referred Measure - Errors

This is in reply to your letter in which you request an interpretation of section 16 of the 1959 Small Loans Act which is designated as chapter 136 of the 1959 Session Laws, which measure was referred by the people of the State of North Dakota under the provisions of Section 25 of the North Dakota Constitution and appeared as measure No. 5 on the June primary ballot. Measure No. 5 which was chapter 136 of the 1959 Session Laws was approved by the voters of the state of North Dakota on June 28, 1959, and became law thirty days thereafter.

The language in question is found in section 16 as it appeared on the North Dakota ballots and reads as follows:

INDEBTEDNESS OF MORE THAN ONE THOUSAND DOLLARS.) A licensee may make loans in amount greater than one thousand dollars and as to that portion of said loan which exceeds one thousand dollars, may charge interest only as permitted by the general interest laws of this state. If the borrower or the borrower and his spouse, indirectly or directly, have two or more loans outstanding to the same licensee at the same time with total principal balances aggregating in excess of one thousand dollars then neither loan shall bear the charges authorized by this Act. "

The 1959 Session Laws on page 251 have some footnotes with reference to certain language having been included through clerical error and cite House Journal, page 1206, and Senate Journal pages 959 and 960. The footnotes in effect state that in the language "as to that portion of said loan which exceeds one thousand dollars, may" was erroneously included in the bill as signed by the Governor. Further, that the word "only" was erroneously inserted and that the word "thereon" should have been used instead of the word "only."

Section 16 as quoted above contains the identical provision of the law, House Bill 537, as signed by the Governor and transmitted to the Secretary of State. The Secretary of State received the signed bill and in the absence of any other action must assume that the bill as presented to him and as signed by the Governor was properly engrossed and enrolled and is the bill as passed by the Legislature. This bill was then referred by the people of the State of North Dakota, as permitted under Section 25 of the North Dakota Constitution. The people referred the measure as signed by the Governor and filed in the Secretary of State's office.

There is authority that clerical errors or other errors can be corrected by referring to the Journal to correct what appears to be an obvious error. However, in this instance the measure was referred and the people voted on the measure. Once the measure has been submitted to the people for approval or disapproval and has been approved by the people, we do not believe that resort to the Journal may be had for making corrections, especially where the language in question does not appear to be erroneous in itself or where it expresses a clear meaning.

The bill as submitted to the people for approval and as passed and as approved by them must out of necessity prevail over any other provision of the bill. To state it another way, the people of North Dakota approved House Bill 537, chapter 136 of the 1959 Session Laws, in the form and in the language as it appeared on the ballot which language is identical to section 16 quoted above.

It, therefore, is our opinion that section 16 as it appeared on the ballot and as quoted above is the present law. Under the language it is clear that a licensee may charge the interest rates as prescribed in the bill on an amount up to and including one thousand dollars, but may not charge such interest rates on any amount exceeding one thousand dollars is the regular interest permitted under the laws of the state which is seven percent per annum.

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