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FILE NO. S-698

BANKS AND BANKING:
Allowable Rate of Interest

H. Robert Bartell, Jr.
Commissioner of Banks and Trust Companies
State of Illinois
Room 400 Reisch Building
4 West Old State Capitol Plaza
Springfield, Illinois 62701

Dear Mr. Bartell:

I have your letter in which you request an opinion as to whether section 5 of the Illinois Banking Act (Ill. Rev. Stat. 1971, ch. 16 1/2, par. 105), authorizes an Illinois State bank to charge a rate of interest greater than otherwise permitted by section 4 of "AN ACT in relation to the rate of interest and other changes in connection with sale on credit and the lending of money" (Ill. Rev. Stat. 1972 Supp., ch. 74, par. 4), when National banks are so permitted by an Act of Congress. The

relevant portion of section 5 of the Illinois Banking Act, supra, reads as follows:

> "A bank organized under this Act or subject thereto shall be a body corporate and politic and shall, without specific mention thereof in the charter, have all the powers conferred by this Act and the following additional general corporate powers:
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> * * *
>
> (11) Notwithstanding any other provisions of this Act, to do any act and to own, possess and carry as assets property of such character, including stock, which is at the time authorized or permitted to National Banks by an Act of Congress, but subject always to the same limitations and restrictions as are applicable to National Banks by the pertinent Federal law.
> * * * "

This provision was approved October 10, 1969, by Public Act 76-1826 (Laws 1969, p. 4025, 4027), adopted at referendum election, November 3, 1970.

"AN ACT in relation to the rate of interest", supra, reads in relevant part as follows:

> "In all written contracts it shall be lawful for the parties to stipulate or agree that 8% per annum, or any less sum of interest, shall be taken and paid upon every $100 of money loaned or in any manner due and owing from any person to any other person or corporation in this state, and after that rate for a greater or less sum, or for a longer or shorter time, except as herein provided.

> The maximum rate of interest that may lawfully be contracted for is determined by the law applicable thereto at the time the contract is made. Any provision in any contract, whether made before or after July 1, 1969, which provides for or purports to authorize, contingent upon a change in the Illinois law after the contract is made, any rate of interest greater than the maximum lawful rate at the time the contract is made, is void.
>
> It is lawful to receive or to contract to receive and collect interest and charges as authorized by this Act and as authorized by the 'Consumer Installment Loan Act', approved August 30, 1963, as now or hereafter amended, and by the 'Consumer Finance Act', approved July 10, 1935, as now or hereafter amended. It is lawful to charge, contract for, and receive any rate or amount of interest or compensation with respect to the following transactions: * * * "

Eight exceptions follow, none of which are relevant here. The original version of this Act was passed on May 24, 1879 (Laws 1879, p. 184), and has been amended several times, most recently by Public Act 77-2286, effective August 8, 1972.

In interpreting the law in regard to banking, it must be remembered that banks are strictly regulated in the public interest and that any ambiguity as to their powers must be interpreted against the bank and in favor of the public. This was so stated by the Supreme Court in State Bank of Blue Island v. Benzing, 383 Ill. 40 at 52-53:

> "* * * This court has often held that the banking business is so impressed with a public interest that it is subject to strict regulatory legislation. (Continental Nat. Bank and Trust Co. v. Peoples Trust and Savings Bank, 366 Ill. 366; People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75; Knass v. Madison and Kedzie State Bank, 354 Ill. 554.) This court in the case of Knass v. Madison and Kedzie Bank, 354 Ill. 554, on page 561 of the opinion, said: 'The rule long recognized and frequently announced by this court is, that a bank incorporated under legislative charter, like other corporations so organized, has only such powers as are expressly conferred by the statute under which it is organized and such powers as are necessarily implied from the specific grant of power. Every power that is not clearly granted is withheld. Enumeration of powers granted implies exclusion of all others, and any ambiguity in the terms of the grant of power must operate against the corporation and in favor of the public. * * * "

Proceeding then with your specific question, there seemingly is a conflict between "AN ACT in relation to the rate of interest", supra, and the Illinois Banking Act, supra. The Act in relation to the rate of interest supposedly prevents a bank from charging more than 8% interest per annum, (unless an exception applies), however, the Banking Act could be read to allow a State bank to do any act, including the charging of a greater rate of interest when a National bank is authorized by Act of Congress to do so. Since the Banking Act was passed subsequent to the Act in relation to the rate of interest, it

could be argued there was an implied repeal of the Act in relation to the rate of interest.

The Supreme Court of Illinois in Rosehill Cemetery Co. v. Lueder, 406 Ill. 458, pp. 465-466, set forth the rules of statutory construction to be applied in a situation such as this.

> "* * * As a general rule repeals by implication are not favored. (Village of Glencoe v. Hurford, 317 Ill. 203; Brotherhood of Railroad Trainmen v. Elgin, Joliet and Eastern Railway Co., 382 Ill. 55; Caruthers v. Fisk University, 394 Ill. 151.) An implied repeal results from some enactment the terms and necessary operation of which cannot be harmonized with the terms and necessary effect of an earlier act, and therefore the last expression of law prevails, since it cannot be supposed that the law-making power intends to contradict and enforce laws which are contradictions. It is also essential that the implication, to be operative, must be necessary, and, if it arises out of repugnancy between two acts, the later abrogates the earlier one to the extent that it is inconsistent and irreconcilable with it, but a later and older statute will, if possible and reasonable to do so, be always construed together, so as to give effect not only to distinct parts or provisions of the older law not inconsistent with the new law, but to give it effect as a whole, subject only to restrictions or modifications, when such seems to have been the legislative purpose. People ex rel. Mathews v. Board of Education, 349 Ill. 390; People v. Shader, 326 Ill. 145; Schneider v. Board of Appeals, 402 Ill. 536.
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> In accordance with this general rule it has been many times held that the earlier statute continues in force unless the two are clearly inconsistent and repugnant with each other, or unless in the later statute some express notice is taken of the former, plainly indicating an intention to repeal it. And, where two acts are seemingly repugnant

> they should, if possible, be so construed that the later will not operate as a repeal of the former by implication. (Jensen v. Fricke, 133 Ill. 171; County of Cook v. Gilbert, 146 Ill. 268; Rich v. City of Chicago, 152 Ill. 18; People ex rel. Brummet v. Moeckel, 256 Ill. 598.) Where two acts or parts of the same act are seemingly repugnant they should be so construed, if possible, that both may stand. People v. Shader, 326 Ill. 145; Anderson v. City of Park Ridge, 396 Ill. 235. * * * "

The Illinois Banking Act shows no clear intention to repeal the effect of the Act in relation to the rate of interest. Therefore, the question is whether the two Acts are so clearly inconsistent and repugnant that repeal by implication is necessary. If not, the two Acts must be construed so that both may stand.

There is no room to construe "AN ACT in relation to the rate of interest" to include an exception to fit the needs of a broader reading of the Illinois Banking Act. This Act lists eight exceptions to the general rate of interest provision. Since it does not list any exception for banks, such an exception would be excluded. This is according to the rule of construction expressio unius exclusio alterius, which means that the mention or enumeration of one or more certain things or modes of action in a statute excludes all other things or modes of action not mentioned in the statute. (I.L.P. Statutes, sec. 119.) The General Assembly, if it had intended such an exception, could

have easily amended "AN ACT in relation to the rate of interest", supra, as it has previously done as recently as by Public Act 77-2286, effective August 8, 1972.

In construing the Illinois Banking Act, the rule of ejusdem generis should be applied. This rule was stated as follows in McEvoy v. Brown, 17 Ill. App. 2d 470, p. 477:

> "* * * The rule of ejusdem generis is that general words following particular ones should be construed as meaning of the same general character, sort, kind or class with those named. Holmes v. Rolando, 320 Ill. App. 475; Bullman v. City of Chicago, 367 Ill. 217; Bossert v. Wabash R. Co., 338 Ill. App. 488. * * * "

The relevant section of the Illinois Banking Act sets forth such particular words as "to own, possess and carry as assets property of such character, including stock". The general words are "to do any act". The acts which are authorized by this section must be of the same general character, sort, kind or class as those particular acts previously named. These particular acts all relate to the kind of property and the manner in which such property may be held by a bank. They do not relate in any way to the rate of interest which a bank may charge.

I realize that in this particular provision the general words do not follow but precede the specific words. This is of no importance for the rule of ejus dem generis

is only a specific application of the broader rule of nocitur a sociis. (Union Traction Co. v. City of Chicago, 199 Ill. 484.) This rule means that associated words are of assistance in determining the exact meaning to be given a certain word as stated by the Supreme Court in People v. Goldman, 7 Ill. App. 3d 253 at 255:

> "* * * Legislative words are not inert and derive vitality from the obvious purposes at which they are aimed. * * * This aid contemplates that where two or more words of analogous meaning are employed together in a statute, they are understood to be used in their cognate sense to express the same relations, and give color and expression to each other. * * * "

Furthermore, it is clear from the language "notwithstanding any other provisions of this Act" that this provision was written in regard to other provisions of the Act. No other provision of the Act relates to the rate of interest a bank may charge.

Finally, an interpretation of this section as not applying to interest rates, does not leave it without meaning, since it still would relate to at least the type of property which an Illinois State Bank may own, possess, or carry as an asset. As previously shown, such an interpretation is neither constrained nor illogical.

Since the language of the Illinois Banking Act does not require an interpretation which is inconsistent with or repugnant to, "AN ACT in relation to the rate of interest", the two Acts must be construed together so that both may stand. I am, therefore, of the opinion that the Illinois Banking Act would not repeal by implication "AN ACT in relation to the rate of interest", and that Illinois State banks are subject to its provisions, even though National banks may be permitted by an Act of Congress to charge a higher rate of interest.

Very truly yours,

ATTORNEY GENERAL