

762.

CHATTEL LOAN COMPANY—EXECUTING LOAN FOR \$500 SECURED BY SINGLE PROMISSORY NOTE AND MORTGAGE—HOW PAYMENTS SHALL BE ALLOCATED—COMPUTATION OF INTEREST.

SYLLABUS:

1. *Where a chattel loan company loans on one note and mortgage in excess of \$300.00, a charge of three per cent per month on \$300 of the unpaid monthly balance may be deducted from a payment made on said mortgage, and a further deduction on the basis of eight per cent per annum on the unpaid monthly balance in excess of \$300.00, and the balance of said payment shall apply to the reduction of the principal.*

2. *When the principal of a note and mortgage in excess of \$300 has been reduced to \$300.00 or less, a charge of three per cent per month figured on the unpaid monthly balance may be charged.*

COLUMBUS, OHIO, August 19, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DER SIR:—This will acknowledge receipt of your recent communication which reads as follows:

“Your opinion is respectfully requested on the following questions relating to the payment of interest under Section 6346-5 and Section 6346-5a of the General Code:

‘A’ a chattel loan company loans to ‘B’ an individual \$500.00. One note of \$500.00 is signed by ‘B.’ Interest at 3% per month is charged on the \$300.00 and interest at 8% per annum is charged on the balance of \$200.00. When payments are made by ‘B’ to ‘A’, how shall such payments be allocated?

Shall these payments be applied to the \$300.00 until that is entirely liquidated or may ‘A’ elect whether they shall be applied in liquidation of the \$300.00 or of the balance of \$200.00 or must the allocation be made proportionately on each amount?”

It is to be assumed that the indebtedness incurred in the illustration set out in your communication is based upon a promissory note in the sum of five hundred dollars, secured by chattel mortgage, and that the mortgagee is to be regulated by the provisions of the General Code relating to chattel loans. Section 6346-5 of the General Code, provides in part as follows:

“No such licensee or licensees shall make a loan or purchase or furnish guaranty, or security, as hereinbefore provided at a greater total charge, including interest, than three per cent per month; except that on loans that do not exceed fifty dollars in amount, in whatever manner made payable, an inspection fee of not to exceed one dollar may be collected at the time the loan is made, when such loan is made for a period of not less than four months; and such inspection fee shall not be imposed upon the same borrower for any new or additional loan made within four months after such charge has been imposed. Said three per cent per month shall not be paid in advance and shall be computed on unpaid monthly balances, without compounding interest or charges. No bonus, fees, expenses, or demands of any nature whatsoever, other than said inspection fee and said total charge of three per cent per month (which shall include interest) as hereinbefore provided, shall be made,

paid, or received, directly or indirectly, for such loans, purchases or furnishing guaranty or security, wage assignments or advancements except court costs upon the actual foreclosure of the security or upon the entry of judgment.

* * * "

The 88th General Assembly passed a supplemental section to that provision known as Section 6346-5a, which provides:

"Provided, however, that upon the amount in excess of three hundred dollars (\$300.00) for principal owing to the licensee for any such loan, purchases or furnishing guaranty or security, no licensee shall directly or indirectly charge, contract for or receive any interest or consideration greater than at the rate of eight per cent per annum, which shall include all charges, shall not be paid in advance and shall be computed on unpaid monthly balances, without compounding interest or charges. The foregoing eight per cent per annum limitation of rate herein made shall also apply to any licensee who permits any person, as borrower, or as endorser, guarantor, surety for, or as spouse of any borrower, to owe directly or contingently, or both, to the licensee at any time the sum of more than three hundred dollars (\$300.00) for principal.

If interest, consideration or charges in excess of those permitted by this act shall be charged, contracted for or received, the contract and all the papers in connection therewith shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever."

A promissory note is a written promise of one person to pay to another named therein, or to order or bearer, a *fixed sum of money* at a time specified therein or at a time which must certainly arrive. This is the sum and substance of the various definitions given by textbook writers and by the courts.

I am inclined to the view that in consideration of your question, only one principal sum can be considered, that being five hundred dollars, and that it is not proper to consider the principal of the note divided into two amounts as indicated in your letter, to-wit, two hundred dollars and three hundred dollars.

Your inquiry therefore resolves itself into the construction of Sections 6346-5 and 6346-5a, General Code, *supra*. The ordinary rules governing the interpretation of statutes apply to legislative enactment concerning interest. Interest statutes being in derogation of the common law must be strictly construed. Statutory provisions respecting the allowance of interest operate only as acquired rights and are not permitted to have a retroactive effect. See *Corpus Juris*, Vol. 33, page 187.

Coming now to consider the pertinent sections above referred to, it is apparent from the language of Section 6346-5a, General Code, that a charge of only eight per cent per annum can be made on the principal over and in excess of three hundred dollars. With this in mind and considering that monthly payments are made on the loan in question, I am compelled to be of the opinion that three per cent per month computed monthly on the unpaid balance may be deducted from said payment on the sum due not in excess of three hundred dollars, and that on the amount in excess of three hundred dollars a charge computed monthly at a rate of eight per cent per annum may be deducted. The balance of such payment shall be applied to the reduction of the principal and the eight per cent per annum charge shall only apply so long as the principal amount exceeds three hundred dollars. When payments have reduced the principal to three hundred dollars or less, the charge to be made shall be three per cent per month computed on the unpaid monthly balance.

In view of the foregoing I do not feel that further discussion of your inquiry is necessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

763.

APPROVAL, ARTICLES OF INCORPORATION OF THE MONARCH
INSURANCE COMPANY.

COLUMBUS, OHIO, August 19, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning herewith Articles of Incorporation of the Monarch Fire Insurance Company, with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

764.

SCHOOL DISTRICT—SURPLUS OF GENERAL FUND LEGALLY USED
FOR EQUIPPING SCHOOL BUILDING—CONTRACTING FOR BUILD-
ING IN EXCESS OF AMOUNT VOTED BY ELECTORS UNAUTHOR-
IZED—EXCEPTION—BUDGET COMMISSION.

SYLLABUS:

1. *A surplus appearing in the general fund of a school district may be legally used for purchasing needed equipment for a school building.*
2. *If a board of education has, pursuant to vote of the electors, authorized \$90,000.00 bonds for the purpose of constructing and equipping a school building, such board has no authority to contract for such building under a plan involving an estimated expenditure for such building and equipment in an amount in excess of that sanctioned by the voters, except in cases when such excess may be met by surplus available funds on hand.*
3. *Powers and duties of budget commission discussed.*

COLUMBUS, OHIO, August 19, 1929.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date, which is as follows:

“I am in receipt of the following letter from Algernon Payne, clerk of the Mantua school board:

‘Regards financing the purchase of equipment for our new school building in our village, the board of education wishes to obtain the following informa-