

OPINION NO. 65-144**Syllabus:**

According to the mandate of Section 3351.08 (E), Revised Code, the participating lenders of the Ohio Higher Education Assistance Commission may not charge interest on loans in an amount in excess of five and one-half per cent, notwithstanding the fact that the borrower is in default in the payments due upon such loan.

**To: B. H. Maddox, Ohio Higher Education Assistance Commission,
Columbus, Ohio**
By: William B. Saxbe, Attorney General, August 5, 1965

In your letter of request you stated that the Ohio Higher Education Assistance Commission, (OHEAC), in order to permit its participating lenders to collect interest beyond the due date of an interim note that has not been properly paid, and which is in default, wishes to add the following sentence to such notes:

"After maturity hereof said sum or any unpaid balance thereof shall bear interest at the maximum lawful rate allowed in the State of Ohio, until paid or refinanced."

You stated further in your request that the maximum legal rate of interest in Ohio is eight per cent (8%)

simple interest, but that Section 3351.08 (E), Revised Code, provides that the OHEAC may guarantee loans at a maximum rate of five and one-half per cent (5½%) interest.

The problem then presented is whether the OHEAC's participating lenders may charge eight per cent (8%) interest in a penalty situation, or whether five and one-half per cent (5½%) is the maximum interest which may be assessed.

Section 3351.05, Revised Code, which section authorizes the establishment of the Ohio Higher Education Assistance Commission, provides in part as follows:

"There is hereby created a commission to be known as the 'Ohio higher education assistance commission.' The purpose of such commission is to make available to residents of this state improved opportunities for higher education and to improve the general health and welfare by raising the educational levels of such residents by guaranteeing loans made to persons who are attending or plan to attend institutions of higher education, when such loans are made to assist such persons in meeting their expenses of higher education
* * *"

Section 3351.08, Revised Code, provides in its part here pertinent that:

"The Ohio higher education assistance commission may guarantee loans made to students of institutions of higher education subject to the following conditions and limitations:

"* * * * *"

"(E) The interest charged on any guaranteed loan including the charge required by division (F) of this section shall not exceed five and one-half per cent per year.

"(F) Each guaranteed loan shall carry a special interest charge of one-half of one per cent per year which shall be paid to the commission by the institution or bank making the loan.* * *"

(Emphasis added)

Pursuant to the provisions of Section 3351.05, supra, the OHEAC was created for the purpose of guaranteeing loans made to state residents attending or planning to attend an institution of higher education, in order that the general health and welfare might be improved by raising the educational level of such residents. The purpose of this provision is to provide students, who would otherwise be unable to obtain a loan of money at a reasonable rate of interest, with the security necessary to obtain a loan for the purpose of furthering their education.

It is provided in Section 3351.08, supra, that the OHEAC may guarantee loans made to students, but that such guarantee shall be made subject to certain limitations and conditions. Subsection (E) of this section states that the interest charged on any guaranteed loan shall not exceed five and one-half per cent per year.

It is my opinion that the directive contained in Section 3351.08 (E), supra, is mandatory, and that a lending institution is precluded from charging interest at a rate in excess of five and one-half per cent per year upon any loan guaranteed by the OHEAC. If it was the intention of the General Assembly to permit an increased rate of interest to be charged upon amounts in default on loans guaranteed by the OHEAC, such a provision could also have been made. However, the General Assembly instead provided that the interest charged upon loans guaranteed by the OHEAC shall not exceed five and one-half per cent.

Therefore, it is my opinion and you are hereby advised that according to the mandate of Section 3351.08 (E), Revised Code, the participating lenders of the Ohio Higher Education Assistance Commission may not charge interest on loans in an amount in excess of five and one-half per cent, notwithstanding the fact that the borrower is in default in the payments due upon such loan.