

Opinion No. 62-48

March 23, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Keith Moore, State Bank Examiner, State Banking Department, Santa Fe, New Mexico

QUESTION

In Opinion No. 62-44, dated March 16, 1962, this office advised you that under certain conditions small loan licensees can sell credit, life, health and accident insurance. You now ask for elaboration as to permissible charges by the licensee for credit, life, health and accident insurance by presenting the specific question set forth below.

QUESTION

Are commissions on the sale of credit, life, health and accident insurance sold by a small loan licensee, as well as the premiums for such insurance, to be considered charges in determining the total maximum charges permissible?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 48-17-43, N.M.S.A., 1953 Compilation (P.S.), sets forth the maximum charges that can be made by a small loan licensee.

Subsection A states that the charges enumerated therein are limiting maximums and that a licensee can charge a lesser rate.

Subsection C provides that:

"Except as in this act elsewhere provided no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received."

Subsection D provides in pertinent parts as follows:

"Any charge, profit or advantage of any kind whatsoever that any person may contract for, collect, receive or in any wise obtain by any collateral sale, purchase or agreement

including premiums on credit, life, health, and accident insurance in connection with the negotiating, arranging, making or otherwise in connection with any loan made pursuant to this act, except commissions received as an insurance agent or broker licensed by the state insurance commissioner of New Mexico on insurance written as **hereinafter permitted**, shall be deemed to be charges for the purposes of regulation under this act." (Emphasis added).

The only exception to the prohibition against total charges in excess of the amounts set forth in subsection A relates to the sale of insurance on tangible personal property which is offered as security for the loan.

Since commissions on the sale of credit, life, health and accident insurance, as well as the premiums themselves, are charges for purposes of determining the maximum rates permitted, a small loan licensee who is already charging the maximum rates cannot charge the borrower any money for the credit, life, health and accident insurance -- either as a premium or as a commission.

Our holding in Opinion No. 62-44, where the licensee proposed to add the amount of the premium on to the final payment, assumed a situation where the licensee would be charging a premium for credit, life, health and accident insurance because his **total** charges, direct and indirect, would not be exceeding the statutory maximum set forth in subsection A.

It is our opinion then, that if the total charges to a borrower by the small loan licensee already equals the maximum rate permitted, **no charge** can be made to the borrower for credit, life, health or accident insurance, either as a premium or as a commission on the sale.