

**OPINION
68-26**

November 20, 1968 (OPINION)

Mr. William C. Smith

First Vice President

The Bank of North Dakota

RE: Bank of North Dakota - Interest Limitation - Loans Secured by Fe

or State Government

This is in response to your letter in which you ask for a formal opinion on the following question:

'Does a loan that is guaranteed by the Small Business Administration, being an agency of the United States Government, fall within the scope of Sections 6-03-47, 6-03-47.1, 6-03-48, 6-03-49, and 6-03-50 as being a loan transaction excepted from the interest limitation in Section 47-14-09?'

The Small Business Administration was created by 15 U.S.C.A., 663 et. seq. It was not organized pursuant to authority granted by Congress but was actually created by Congress. The purpose for creating the Small Business Administration is set out in 15 U.S.C.A., 631, and can be summarized by stating that it was created to encourage free competition and preserve the economic well-being and security of the nation.

In Re Lehigh Valley Mills, Inc., 225 Fed. Supp. 494, the Court resolved any doubt as to the Small Business Administration being a governmental agency of the United States or an instrumentality thereof by holding that same was an agency of the United States. The same result was reached in Finch v. Small Business Administration, 112 S.E.2d. 200, the Court held that the Small Business Administration was an integral part of the United States Government.

Section 6-03-47.1 of the North Dakota Century Code provides as follows:

INVESTMENT IN LOANS SECURED BY FEDERAL OR STATE GOVERNMENT. Without regard to any other provision of law, banks, building and loan associations, insurance companies, and other organizations of this state authorized to make mortgage loans and whose mortgage lending is regulated by law, are authorized to make or buy and sell any loan secured or unsecured, which is insured or guaranteed in any manner in part or in full by the United States or any instrumentality thereof, or by this state or any instrumentality thereof, or for which there is a commitment to so insure or guarantee, or for which a conditional guarantee has been issued, provided, however, that if such insurance or guarantee is less than twenty percent of the true normal value it must first be approved in writing by

the state examiner, and in the event of any such loan being made by a state bank in a principal amount in excess of ten percent of the capital and surplus of such bank, it must first be approved by the state examiner."

This section would appear to apply if the mortgage loan is insured or guaranteed in any manner in part or in full by the United States or instrumentalities thereof, or by this State or any instrumentality thereof. Thus, a loan that is guaranteed by the Small Business Administration would come within said provisions.

Section 6-03-47 of the North Dakota Century Code authorizes the Bank of North Dakota, building and loan associations, banks and trust companies, and insurance companies to make loans and advance credit where said loans or credits are insured by or guaranteed in any manner in part or in full by the United States or an instrumentality thereof.

Section 6-03-48 of the North Dakota Century Code authorizes banks, savings banks, trust companies, building and loan associations, and insurance companies, executors and administrators and fiduciaries, and the State of North Dakota and its political subdivisions to invest its funds in notes and bonds secured by mortgage or deed of trust which is insured by the Federal Housing Administrator.

It is further observed that Section 6-03-50 of the North Dakota Century Code makes an exception to the interest rates if the loan or investment is made pursuant to Sections 6-03-47, 6-03-48, and 6-03-49. It is observed that Section 6-03-47.1 is not included within the exceptions found in Section 6-03-50. This compels the conclusion that the transactions under Section 6-03-47.1 must rest on the provisions contained in said section, which constitute an exception independent of the exception found in Section 6-03-50.

It is therefore our opinion that the transactions described and referred to in Sections 6-03-47, 6-03-47.1, 6-03-48, 6-03-49 and 6-03-50 constitute an exception to the interest limitations found in Section 47-14-09 if the transactions, loans or credits are guaranteed in any manner, in part or in full, by the United States or any instrumentality thereof.

HELGI JOHANNESON

Attorney General