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STATE OF NEBRASKA
OFFICIAL
JAN 30 1992
DEPT. OF JUSTICE

DATE: January 28, 1992

SUBJECT: Application of the Provisions of the Installment Loan Act, Neb.Rev.Stat. §§ 45-114 to 45-158, to certain Lending Activities and Transactions by Installment Loan Companies.

REQUESTED BY: James A. Hansen, Director
Department of Banking and Finance

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to your request that the Attorney General "re-examine" certain conclusions stated in an earlier opinion, Opinion of the Attorney General No. 90037, October 10, 1990. Specifically, you request review of the conclusion that certain lending activities exempted in Neb.Rev.Stat. § 45-101.04 (Cum. Supp. 1990) are not part of the licensed business of installment loan companies.

After review, it appears that the earlier opinion of this Office did not fully address the issues related to loan activities and transactions set forth in § 45-101.04. We conclude that the lending activities included in § 45-101.04(2), (6), (8) and (10) constitute part of the licensed business of installment loan companies. This conclusion is based on the express provisions of the Installment Loan Act.

The Installment Loan Act regulates and limits all loans made by a licensee. Gruenemeier v. Commonwealth Co. 178 Neb. 66, 131 N.W.2d 713 (1964). Provisions of the Act include restrictions applicable to interest rates and other fees charged by installment

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loan companies.[1] However, Neb.Rev.Stat. § 45-101.04 (Cum. Supp. 1990) provides that interest rate limitations are not applicable to loans made by any licensee and, it has been held that the exemptions specified in § 45-101.04 exempt certain lending activities and transactions from the Installment Loan Act. McCaul v.American Savings Co., 213 Neb. 841, 331 N.W.2d 795 (1983).[2] Further, Neb.Rev.Stat. § 45-138(1) (Reissue 1988) expressly authorizes licensees to charge or contract for any rate of interest permitted by § 45-101.04. Accordingly, the restrictions concerning prepayment penalties, interest rates, and other charges are not applicable and licensees may make loans which include the activities and transactions exempted in § 45-101.04.

The related question is whether loans made under the provisions of § 45-101.04 by installment loan companies constitute a part of their licensed business. The authorized business of persons licensed to make installment loans is described in Neb.Rev.Stat. § 45-116 (Reissue 1988) which states:

> Any person may after procuring a license from the Department of Banking and Finance engage or continue in the business of making loans of money, and charge, contract for, and receive the maximum for interest and other charges in accordance with the authorization and requirements of sections 45-116 to 45-155.

In addition, § 45-138(1) in part provides that "[l]icensees may charge, contract for, or receive any amount, rate of interest, or charge or exercise any powers permitted by section 45-101.03, 45-101.04 . . .". Prior to amendment, § 45-138 required that every loan provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. This traditional requirement of installment payments is no longer a requirement of the Installment Loan Act.[3] Accordingly, single payment loans and

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[1]Neb.Rev.Stat. § 45-137 (Reissue 1988) establishes interest rate limitations and method for calculation of interest and other charges.

[2]McCaul concerned lending activities of industrial loan and investment companies but the rationale is applicable to installment loan companies.

[3]The installment payment provisions now apply only where the contract of loan requires repayment in substantially equal and consecutive monthly payments under § 45-137(2). 1982 Neb. Laws, LB 702 (codified at § 45-138).

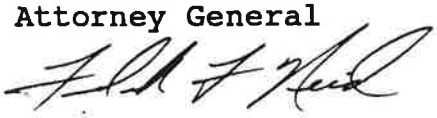
demand loans are not prohibited under the Act. Rather, the express language of § 45-138 includes the lending activity and transactions described in 45-101.04 within the Act. Accordingly, we conclude that such lending activity constitutes a part of their licensed business.

To conclude otherwise would have the effect of nullifying the provisions of § 45-138 which expressly authorizes and empowers licensees to engage in the lending transactions described in § 45-101.04. It is a cardinal rule of statutory construction that statutes pertaining to the same subject matter should be construed together, as if they were one law, and effect given to every provision. Seldin v. Northland Mortgage Co., 189 Neb. 175, 202 N.W.2d 174 (1972). The conclusion that loans and lending activities included in § 45-101.04 constitute part of the licensed business of installment loan companies gives effect to all pertinent provisions.

In summary, it is our opinion that the lending transactions and activities included in § 45-101.04 are permitted activities and constitute part of the licensed business of installment loan companies. Opinion No. 90037 is revised to the extent it concludes otherwise.

Sincerely yours,

DON STENBERG
Attorney General



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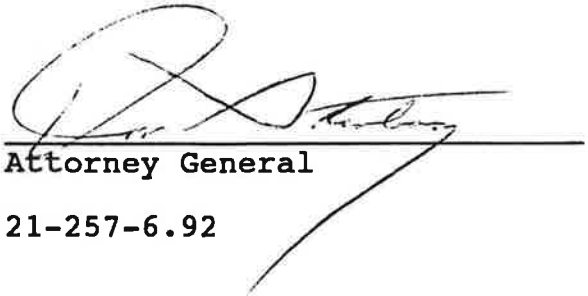

Attorney General

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