



The Attorney General of Texas

April 10, 1981

MARK WHITE
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

1607 Main St., Suite 1400
Dallas, TX. 75201
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

1220 Dallas Ave., Suite 202
Houston, TX. 77002
713/650-0666

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

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Honorable Carl A. Parker, Chairman
Senate Committee on Financial
Institutions
P. O. Box 12068
Austin, Texas 78711

Opinion No. MW-319

Re: Whether article XVI, section 11 of the Texas Constitution requires that legislation tying the interest rate to a moving index fix an absolute maximum rate

Dear Senator Parker:

You ask whether article XVI, section 11 of the Texas Constitution requires that an absolute maximum interest rate be fixed in all cases where the authorized rate is tied to a moving index. Article XVI, section 11 provides in pertinent part:

The Legislature shall have authority to... define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious. . . .

We believe your question is answered by Letter Advisory No. 146 (1977) issued by this office. That letter addressed the question of whether the legislature could authorize the Finance Commission to establish maximum interest rates for small loans. It stated as follows:

Article 16, section 11 authorizes the Legislature 'to fix' maximum rates of interest. The word 'fix' has a variety of meanings, depending upon the context. See Gist v. Rackliffe-Gibson Const. Co., 123 S.W. 921 (Mo. 1909). We believe the following definition from Webster's Second International Dictionary states the meaning of 'fix' as it appears in this constitutional provision:

to set or place definitely; to establish;. . . to determine; to assign precisely.

We note that Texas courts have assumed 'fix' in this provision to be interchangeable with 'establish.' See

Freeman v. Gonzales County Savings & Loan Ass'n, 526 S.W. 2d 774, 777 (Tex. Civ. App. - Corpus Christi 1975) [aff'd, 534 S.W. 2d 903 (Tex. 1976)]; Home Savings Ass'n of Dallas County v. Crow, 514 S.W. 2d 160, 165 (Tex. Civ. App. - Dallas 1974), aff'd, 522 S.W. 2d 457 (Tex. 1975). We believe the Constitution authorizes the Legislature to enact statutes establishing a precise figure as the maximum interest rate. If it does not enact such statutes, or if for other reasons there is no legislation fixing maximum interest rates for any class of transactions, the Constitution itself fixes a ten percent maximum.

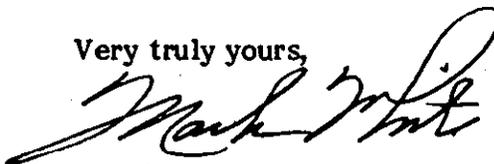
In Attorney General Opinion MW-17 (1979), we considered the constitutionality of a bill which stated the interest rate as one percent more than the discount rate on 90-day commercial paper in effect on the day the loan is made. The bill, however, gave a minimum interest rate of 10% and a maximum rate of 12%. We found that the bill "fixes an absolute maximum rate of interest, in that in no instance may the rate exceed 12 percent a year." We noted that if the legislature wished to ensure the validity of the bill, it could draft a severability clause to render the 12 percent maximum applicable regardless of the validity of the other provisions.

It is clear from Attorney General Opinion MW-17 and Letter Advisory No. 146 that a numerical maximum interest rate must be stated in legislation which attempts to set the interest rate. We do not believe that the legislature would in fact fix the maximum interest rate if it were to enact a formula permitting the computation of maximum interest from economic indicators. Such a statute might permit the computation of a precise maximum interest rate at any given time; however, it only fixes the interest rate in a relative sense. We believe the constitution requires the legislature to fix an absolute maximum interest rate.

S U M M A R Y

Article XVI, section 11 of the Texas Constitution requires that legislation fixing the interest rate state a numerical maximum interest rate.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

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Prepared by Susan L. Garrison
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Thomas M. Pollan