June 8, 1982

HONORABLE MICHAEL M. HORN
Commissioner of Banking
36 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 3—1982

Dear Commissioner Horn:

You have asked for an opinion as to whether a secondary mortgage loan licensee may provide for an increase in the rate of interest charged during the first three years of the loan. For the following reasons, you are advised that a rate increase on a secondary mortgage loan may not take effect during the first three years of the term of the loan.

Your inquiry is occasioned by the enactment of Laws of 1981, c. 103, Sec. 8 which provides in part:

> No rate increase shall take effect during the first 3 years of the term of the loan, or thereafter, (a) unless at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (b) unless at least 365 days have elapsed without any increase in the rate.

The issue posed, from a cursory reading of the language of the statute, is whether or not the qualifying conditions under which an increase may be made, set forth in (a) and (b), modify only the clause "or thereafter" or whether those qualifying conditions also modify the phrase "during the first three years of the term of the loan." It is clear that a rate increase would be permissible during the first three years if those qualifying conditions were deemed to apply.

In order to determine the probable legislative intent, it is appropriate to refer to the rule of statutory construction that full effect should be given to every word of a statute. The Legislature should not be assumed to have used meaningless language or surplusage. *Gabin v. Skyline Cabana Club,* 54 N.J. 550, 555 (1969); *Central Constr. Co. v. Horn,* 179 N.J. Super. 95, 102 (App. Div. 1981); *Newark Bd. of Ed. v. Newark Teachers Union,* 152 N.J. Super. 51, 60 (App. Div. 1977). It is at once apparent that to interpret the qualifying conditions for an increase in the rate of interest to apply to both the clause "or thereafter" and to "during the first three years of the term of the loan" would render that latter phrase meaningless and superfluous. It seems more reasonable to assume that if the Legislature intended to allow for a rate increase during the entire term of a secondary mortgage loan, it would not have drawn a distinction between the first three years of the loan and thereafter. Consequently, it is our reading of the probable legislative intent that the qualifying conditions imposed by (a) and (b) were only designed to modify the phrase "or thereafter" and thereby indicate that an interest rate could only be increased after three years have expired on the mortgage loan.

This construction of the language of the statute is supported by its overall legislative purpose. The law removed specific interest rate ceilings previously established in connection with a wide variety of loans, including, for example, bank installment loans (N.J.S.A. 17:9A-53, -54), educational loans (N.J.S.A. 17:9A-53.4), bank advance loans (N.J.S.A. 17:9A-59.6), small loans (N.J.S.A. 17:10-14), as well as secondary mortgage loans (N.J.S.A. 17:11A-44). In amending each of the statutes fixing interest rate ceilings on these loans, the Legislature generally provided that the initial interest rate to be charged shall be "such rate or rates as may be agreed by the bank [or lender] and the borrower."[1] Nonetheless, it is obvious that the Legislature recognized the hardship to consumers and other borrowers if interest rates were dramatically and frequently increased by a lender during the course of a loan. Accordingly, in each instance, the statute includes statutory safeguards as to the frequency of interest rate increases, the size of the increase as well as the method of notice to the borrower of the increase. Clearly, these safeguards were intended to provide protection for consumers against unstable short-term market rates. A prohibition against interest rate increases during the first three years of a loan is a vital part of the legislative safeguards provided to consumers and borrowers against short-term interest rate fluctuations.

Further, the remarks of Governor Byrne on signing the bill provide additional insight as to the probable meaning of the act. Where a statute is ambiguous on its face, the messages and statements of the chief executive may be used to determine the legislative intent. *State v. Madden,* 61 N.J. 377, 388 (1972); *Caldwell v. Township of Rochelle Park,* 135 N.J. Super. 66, 73-74 (Law Div. 1975). Governor Byrne made the following statement on signing the bill into law:

> [A] lender may not alter the interest rate during the first three years of the loan. Although the language in the bill could be clearer, I read it to restrict a lender's right to alter interest rates until the loan is at least three years old.

The statement made by Governor Byrne is consistent with a sensible reading of the language of the statute and its beneficial legislative purpose. For these reasons, you are advised that an increase in a rate of interest charged on a secondary mortgage loan may not take effect during the first three years of the loan.[2]

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By: DENNIS R. CASALE
Deputy Attorney General

1. Such rates, however, may not exceed the criminal usury rate of 30% for individuals and 50% for corporations, as established by N.J.S.A. 2C:21-19, as amended by P.L. 1981, c. 104.

2. It should be noted that the statute uses the same language with regard to permissible interest rate increases for bank installment loans, educational loans and

small loans. For all of the reasons stated above, it is also our opinion that an increase in the interest rate during the first 3 years of each of these loans would likewise be prohibited. On the other hand, the statute provides that the interest rate to be charged on a bank advance loan may be increased from time to time provided the notice requirements are satisfied. It is clear that where the Legislature intended to allow for increases in the interest rate during the entire term of the loan, it stated its intent in unmistakable terms.

July 8, 1982

G. THOMAS RITI, *Director*
Division of Public Welfare
3525 Quakerbridge Road
Trenton, New Jersey 08619

FORMAL OPINION NO. 4—1982

Dear Director Riti:

A question has arisen with regard to the proper construction of certain amendments to the Local Government Cap Law as such amendments pertain to the financing of municipal and county welfare programs. More specifically, the question relates to the types of municipal and county expenditures which would be encompassed by the provisions of Section 1(l) and Section 2(g) of L. 1981, c. 56 and which, as a consequence, could be excluded from the limitations established by the Local Government Cap Law upon increases in spending by local government units. For the reasons set forth below, you are advised that L. 1981, c. 56 would encompass those expenditures of Federal or State funds for administrative or other purposes made by a municipality or county for welfare programs funded wholly or in part by such funds, as well as those expenditures for administrative or other purposes made by a municipality or county as part of a welfare program in order to provide matching funds upon which the receipt of Federal or State funds is conditioned.

The Local Government Cap Law, L. 1976, c. 68, N.J.S.A. 40A:4-45.1 *et seq.*, was enacted in 1976 for the purpose of controlling the spiraling costs of local government in the State of New Jersey. In 1981, the Legislature enacted several amendments to the statute. L. 1981, c. 56; L. 1981, c. 61; L. 1981, c. 64. Included among these enactments were a number of amendments to those provisions of the Local Government Cap Law which set forth the exceptions to the spending limitations set forth in the statute. L. 1981, c. 56, Sections 1 and 2. Among the amendments to the provisions pertaining to such exceptions were those set forth at Section 1(l) and Section 2(g) of L. 1981, c. 56.

The first of these provisions, Section 1(l) was enacted as a substitute for that part of N.J.S.A. 40A:4-45.3(b) which was deleted in the course of enactment of L. 1981, c. 56. As initially enacted in 1976, N.J.S.A. 40A:4-45.3(b) had provided for the exclusion from a municipality's spending limitation of the following: