

FORMAL OPINION

January 18, 1983

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

FORMAL OPINION NO. 1—1983

Dear Commissioner Horn:

You have requested advice as to whether a bank may assess a prepayment penalty against a borrower who prepays an installment loan prior to the due date of the first payment. You are hereby advised that a bank is permitted to assess a prepayment penalty against a borrower who prepays a loan prior to the due date of the first payment.

Article 12 (N.J.S.A. 17:9A-53 *et seq.*) of the Banking Act of 1948, N.J.S.A. 17:9A-1 *et seq.*, provides limitations upon the authority of banks to make installment loans. Among the limitations imposed upon banks with respect to installment loans is that contained in N.J.S.A. 17:9A-54A which provides in relevant part that:

if the loan is prepaid within 12 months after the first payment is due, a bank may charge a prepayment penalty of not more than (a) \$20.00 on any loan up to and including \$2000.00; (b) an amount equal to 1% of the loan on any loan greater than \$2000.00 and up to and including \$5000.00; and (c) \$100.00 on any loan exceeding \$5000.00. [Emphasis added.]

The meaning of this statute must be sought from the language in which the statute is framed. *Vreeland v. Byrne*, 72 N.J. 292, 302 (1977); *Sheeran v. Nationwide Mutual Ins. Co., Inc.*, 80 N.J. 548, 556 (1979). It is clear from a plain reading of this statute that the Legislature established an outside date prior to which prepayment penalties could be assessed against the borrower. This outside date is "within 12 months after the first payment is due," and any payment made prior to the first installment due date is clearly within that time period. Had the Legislature intended otherwise, it could have simply provided that prepayment penalties could not be imposed if the loan is prepaid prior to the date the first installment payment is due. In the absence of such express language, it cannot be presumed that the Legislature intended to impose such a limitation.

Moreover, a statute should be read to give effect to the true intent of the Legislature, *Alexander v. Power & Light Co.*, 21 N.J. 373, 378 (1956), and cannot be construed so as to lead to absurd, unreasonable or anomalous results. *Schwartz v. Dover Public Schools in Morris County*, 180 N.J. Super. 222, 226 (App. Div. 1981); *Citizens for Charter Change in Essex County v. Caputo*, 151 N.J. Super. 286, 290 (App. Div. 1977). The apparent purpose of this statute was to recognize that a bank has initial costs and expenses associated with making a loan and that if the loan is prepaid early, there may be insufficient earnings to compensate the bank for these costs and expenses. This rationale would obviously apply to a loan paid

ATTORNEY GENERAL

prior to the due date of the first payment. To interpret the statute to bar imposition of a prepayment penalty in such a circumstance would not only violate this apparent legislative intent, but would also lead to absurd and anomalous results in that a bank would not be able to charge a prepayment penalty in the very case where it may be most justifiable.

For the foregoing reasons, it is our opinion that a bank may assess a prepayment penalty against a borrower when an installment loan is prepaid prior to the due date of the first payment on the loan.*

Very truly yours,
IRWIN I. KIMMELMAN
Attorney General

By DENNIS R. CASALE
Deputy Attorney General

* It should be noted that P.L. 1981, c. 103 amended a variety of other consumer loan and contract statutes to permit a prepayment penalty to be imposed "if the loan [or contract] is prepaid within 12 months after the first payment is due." Such prepayment penalties may be imposed for small business loans (N.J.S.A. 17:9A-59.28); sales finance company loans (N.J.S.A. 17:16C-40.1); retail installment contracts (N.J.S.A. 17:16C-41) and home repair contracts (N.J.S.A. 17:16E-69). For the reasons stated above, it is also our opinion that prepayment penalties may be assessed against borrowers if any of these loans or contracts are prepaid prior to the date the first installment payment is due.

January 18, 1983

MR. BARRY SKOKOWSKI, *Director*
Division of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1983

Dear Director Skokowski:

Several questions have been raised by local governmental entities with regard to bidding under the Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.* Since the Division of Local Government Services in the Department of Community Affairs is authorized to assist local governments in all matters affecting the administration of the Local Public Contracts Law, we are providing you with advice concerning specific questions that have been identified by local governmental entities.

I

What are the criteria that are to be utilized in defining "goods contracts" from "service contracts"

The Local Public Contracts Law applies to all contracts whether or