It will be noted that Merit in each instance deducted a flat 4% investigation charge. Is Merit entitled to these charges?

In *Cobb* v. *Puckett* supra, the loan company deducted a 4% investigation charge for 19 loans within a period of some four years. The loan company manager testified he could not say what expenses, if any, had been incurred in checking the credit of the complainant. The court allowed the first investigation charge of $1.92 but disallowed all others.

At the hearing on Merit's claim in this proceeding the loan company introduced no proof in support of its charges for investigation. Under the statute it would be entitled to reimbursement for actual expenses incurred in connection with its investigation, assuming, of course, that some expense was incurred. In my opinion the statute does not authorize a flat 4% fee to be deducted from every loan made, regardless of whether any investigation expense is incurred. The purpose of the statute is to reimburse the lender for actual expenses incurred, not to authorize collection of addition interest.

It will also be noted from an examination of Merit's note that the 4% investigation fee has been been charged on the face amount of the note which includes the amount of the loan, insurance premiums, interest and the investigation fee itself. The statute authorizes a charge "not to exceed four dollars ($4.00) per each one hundred dollars ($100) of the *principal amount loaned.*" (Underscoring added.) This raises the question of whether Merit's instrument is usurious on its face and therefore unenforceable. *White* v. *Kaminsky*, 196 Tenn. 180, 185.[5] It does not appear necessary at this time to determine this question, however. Merit's claim will be allowed in an amount equitable to the parties involved.

Although Merit failed to show that it incurred any expense in investigating the debtor's moral and financial standing, security for the loan, etc., when given a opportunity to do so, its first investigation charge will be allowed in accordance with *Cobb* v. *Puckett*, supra. All other investigation charges will be disallowed.

It must be remembered that the burden of proof is upon Merit to show to the satisfaction of the court that its claim is free from usury and all unauthorized charges. General Order 55(4). Merit failed to carry this burden of proof and in fact introduced no proof whatsoever in support of any investigation charge.

INSURANCE PREMIUMS

Tennessee Code Annotated 45–2007(k) authorizes industrial loan and thrift companies to require at the expense of the borrower, insurance against the hazards to which the collateral used to secure the loan is subject, *and upon failure of the borrower to supply such insurance*, to procure the same. It further authorizes them to accept, *but not require*, as collateral, insurance against the hazards of death or disability of a borrower.

Merit's records indicate the following charges for insurance premiums:

Loan No.	Premiums charged	Rebates when loan "flipped"	Net premiums[1] charged
63-235	$5.76	$4.94	$0.82
63-337	54.69	45.58	9.11
63-483	85.56	56.72	28.84
63-1074	104.16	79.90	24.26
63-1396	634.68	-----------	634.68

[1] This does not include interest and investigation fee charged on insurance premiums. No part of such charges was rebated when the loans were flipped.

Mr. John N. Culvahouse issued the life and accident and health and property insurance policies as agent for American Bankers Insurance Company of Florida. Mr. Culvahouse is manager of Merit Finance Company. Apparently the debtor was given one or more certificates along with various other documents when the loans were negotiated. The certificates refer to a "master policy" but the debtor

[5] When the provisions of the note and trust deed are construed as a single instrument ($531.36 interest added into the face amount of the note, 6% additional interest provided for in the deed of trust) the transaction is not only usurious but the usury appears on the face of the instrument. See *Braniff Invest. Co.* v. *Robertson*, 124 Texas 524, 81 SW (2d) 45.