

monthly in a savings account with the lender in amounts sufficient to pay the note in full at maturity, which is assigned as security. This is commonly known as "The Morris Plan". In other cases, the lender may require other or additional security such as a chattel mortgage or a conditional sale agreement.

The District of Columbia law provides that the parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8% per annum, and that if a person or corporation contracts in the District in writing to pay a greater sum than 8% per annum, the creditor shall forfeit the whole of the interest so contracted to be received. (Secs. 28-3301 and 28-3303, D. C. Code, 1961 ed., Sup. V.)

Many States now have statutes providing that, except in cases of loans secured by mortgages or deeds of trust on real property, interest computed on the principal amount of a loan at the maximum legal rate may be charged or deducted in advance where the borrower is required to repay in equal, or in substantially equal, monthly or other periodic installments. Such statutes provide expressly that interest so computed and deducted shall not be deemed usurious. The D. C. Code is silent with respect to the question whether the charging or deducting of interest in advance on installment loans at the maximum legal rate constitutes usury. I have been unable to find any reported case decided by the Courts of the District of Columbia on this question.

The practice of taking interest in advance at the highest legal rate on short-term loans has long been common in banks and with those dealing in commercial paper in the normal course of trade. Although this may appear to be usurious in principle, it has now become a recognized legal right. 55 *Am. Jur.* 353, Usury § 41. The Supreme Court of the United States has held that under the National Banking Act, a national bank in discounting short-term notes in the ordinary course of business may retain an advance charge at the highest rate allowed for interest by the State law, even though such advance taking of interest would be usurious under the State law in the cases to which it applies. *Evans v. National Bank of Savannah*, 251 U.S. 108 (1919). While the authorities agree that the taking of the highest rate of interest in advance on negotiable paper having twelve months to run is not usury, where a loan is for more than one year, the decisions are not in accord as to whether taking interest in advance for the full period of time constitutes usury. Where the obligation is for a term longer than a year, the taking of interest in advance in periodic payments of one year or less has been considered by nearly all the cases as free from usury. 55 *Am. Jur.* 354, Usury § 42.

By the general weight of authority, the method referred to above as "The Morris Plan" has been held to be legal and not in violation of usury laws. This was recognized years ago by the Office of the Comptroller of the Currency in a letter dated February 12, 1917, from Deputy Controller W. J. Fowler to Fidelity Savings Company in the District of Columbia. In the absence of statutes authorizing banks to operate loan departments in which small loans are made without following the usual requirements found in the Morris Plan, the question of possible usury may be less clear.

In the absence of a statute in the District of Columbia and of any reported Court decision to the contrary, banking institutions here have engaged in this type of business over the years, apparently without any serious question arising. Accordingly, I conclude that, in my opinion, the loans made upon this basis by banking institutions in the District of Columbia may be regarded as legal and as not in violation of the usury law of the District of Columbia.

Very truly yours,

JIM ROGERS.

Mr. Dowdy. Are there any questions of Mr. Gunther?

Mr. McMillan.

Mr. McMILLAN. We, certainly, feel highly honored to have two bank presidents with us this morning, Mr. Gunther and Mr. Jennings. We hope that we can be of assistance in clearing up this problem which you think you may be confronted with a later date.

As I understand it, the Comptroller of the Currency favors this proposed legislation, is that right?

Mr. GUNTHER. Mr. McMillan, this proposal was referred to the Comptroller of the Currency, and I have with me copies of this letter