



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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May 30, 1977

Honorable William N. Patman  
Chairman, Senate Subcommittee  
on Agriculture  
Capitol Building  
Austin, Texas

Letter Advisory No.-146

Re: Constitutionality of  
S.B. 1019 which would autho-  
rize the Finance Commission  
to set interest rates on  
certain loans.

Dear Senator Patman:

You inquire about the constitutionality of certain provisions of the Committee substitute for Senate Bill 1019 which would amend article 5069-3.15, V.T.C.S., to authorize the Finance Commission to establish maximum interest rates for small loans.

Article 16, section 11 of the Texas Constitution provides in pertinent part:

The Legislature shall have authority to classify loans and lenders, license and regulate lenders, 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; provided, further, that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum.

(Emphasis added). The Court of Criminal Appeals has observed that ten per cent per annum is "the maximum interest allowed under the constitution in the absence of a statute such as authorized by Art. 16, Sec. 11." Shakour v. State, 400 S.W.2d 916, 919 (Tex. Crim. App. 1966) (emphasis added). See also Ex parte Wolters, 144 S.W. 531, 538, 574 (Tex. Crim. App. 1911) (defining "legislation").

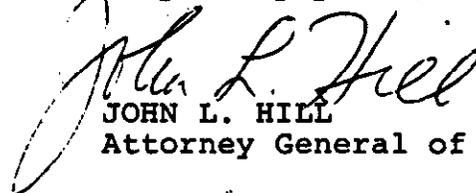
Article 16, section 11 authorizes the Legislature "to fix" maximum rates of interest. The word "fix" has a variety of meanings, depending upon the context. See Gist v. Rackliffe-Gibson Const. Co., 123 S.W. 921 (Mo. 1909). We believe the following definition from Webster's Second International Dictionary 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, writ granted); 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.

Under the interrelated provisions of article 16, section 11, it is our opinion that the Legislature may not delegate its power to establish maximum interest rates. We believe that once it fails to exercise its power to state the maximum by attempting to delegate it to an administrative agency, the constitutional maximum will come into effect. Consequently, the proposed delegation of authority to fix maximum interest rates will, in our judgment, be ineffective. Since article 16, section 11 prevents the delegation of legislative power to establish maximum interest rates, we need not discuss permissible delegation of legislative power in the absence of a constitutional prohibition. See generally Brown v. Humble Oil & Refining Co., 83 S.W.2d 935 (Tex. 1935).

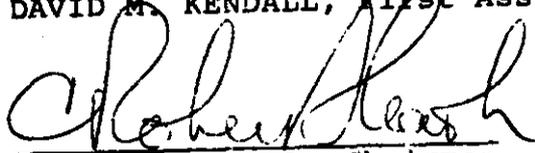
Very truly yours,



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APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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