WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 31, 1974

FILE NO. S-829

**LOANS:
Out-of-State Loan
Companies Doing Business
in Illinois**

-

**Anthony J. Fornelli
Director
Department of Financial Institutions
227 South Seventh Street
Springfield, Illinois 62701**

Dear Mr. Fornelli:

This responds to your predecessor's request for an opinion as to the authority of the Department of Financial Institutions to require an out-of-state finance company which solicits loans within the State of Illinois through the use of the mails or other media, to comply with provisions of the Illinois Consumer Finance Act. (Ill. Rev. Stat. 1973, ch. 74, pars. 19 - 46.) As stated in your letter, many out-of-state finance companies are soliciting business through letters and advertisements in

newspapers and magazines and then making loans to residents of Illinois by mail. I assume these companies have no agents or other contacts within Illinois.

You have drawn my attention to Opinion No. 6079 of the Attorney General of the State of Oregon issued April 26, 1973. This opinion states in relevant part as follows:

> "* * * It is our opinion that by continually soliciting loans within the State of Oregon with the full intention of making those loans (whether actually 'made' inside or outside the state) a finance company would be engaging in the business of making loans and would therefore be required to comply with the [Oregon Consumer Finance Act] licensing requirements.
>
> * * *
>
> Where foreign banks and finance companies systematically solicit loans from Oregon residents by use of the mails, it is abundently clear that such companies are engaging in purposeful economic activity within the State of Oregon. It is also clear that there is no denial of due process in requiring these companies to submit to the jurisdiction of the Oregon courts in actions arising out of their economic activity in this state. If they are subject to the jurisdiction of the courts, they are subject to the jurisdiction of state regulatory agencies." Travelers Health Assn. v. Virginia, 339 U.S. 643.

This opinion stated both that the Oregon Consumer Finance Act intended to regulate out-of-state finance companies doing

business within Oregon and that since it was clear they were doing business in Oregon, regulation by the State would not be a denial of due process.

Section 1 of the Illinois Consumer Finance Act (Ill. Rev. Stat. 1973, ch. 74, par. 19) provides as follows:

> "§ 1. No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of $800 or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this Act and without first obtaining a license from the Department of Financial Institutions, hereinafter called the Department."

Although this section contains broad language and could be read to impose a license requirement on any person, co-partnership, association or corporation loaning money in Illinois, regardless of whether they are located within the State of Illinois, from other provisions of the Act and the circumstances under which it was passed, it is clear that there was no legislative intent for this Act to apply to finance companies located without the State of Illinois. Because of this conclusion it is unnecessary to consider whether or not these companies are doing business within Illinois. While the opinion of the Attorney General of the State of Oregon may be a valid interpretation of Oregon's

Consumer Finance Act, its conclusions are irrelevant to Illinois' Act.

The conclusion that Illinois' Act is not directed to out-of-state finance companies is clear from specific provisions of the Act. Sections 2 and 8 of the Act (Ill. Rev. Stat. 1973, ch. 74, pars. 20 and 26) which concern the application fee and annual license fee, make a distinction between finance companies located within a county of over 500,000 inhabitants and those located elsewhere. While such a distinction makes sense in regard to applying this statute to Illinois, it makes little sense to apply it to companies located outside Illinois doing business through the mails.

Secondly, other provisions indicate that the legislation is directed to a company operating only out of a business establishment to which people came for the loan. Section 4 of the Act (Ill. Rev. Stat. 1973, ch. 74, par. 22) specifically provides that one of the considerations the Department shall make in considering whether to grant the license is:

> "§ 4. * * * (2) [T]hat allowing such applicant to engage in such business will promote the convenience and advantage of the locality or community in which the business of the applicant is to be conducted, * * * "

Section 5 of the Act (Ill. Rev. Stat. 1973, ch. 74, par. 23) provides that the "license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable." Section 7 of the Act (Ill. Rev. Stat. 1973, ch. 74, par. 25) specifically provides as follows:

> "§ 7. * * * Whenever a licensee shall wish to change his place of business to any location other than within the same building originally set forth in his license he shall give written notice thereof to the Department, which shall investigate the facts and, if it shall find that allowing such change of location will promote the convenience and advantage of the locality or community in which the new place of business is to be located, it shall thereupon attach to the license in writing its approval of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location. * * * "

None of these provisions have any application to a finance company located out of state doing business through the mails. The Department of Financial Institutions can make no judgment as to the advantage of the locality or community of an additional finance company when the business is located out of state and is in fact soliciting business from all of Illinois. The requirement of a conspicuous posting of the license is irrelevant to a person who never goes to the office of the finance company. Finally, when a business is dealing through the mails,

a change in location of its place of business is also of no consequence.

From these provisions I think it is clear that the legislature had no intent to require out-of-state finance companies to obtain a license. Furthermore, when the Consumer Finance Act was enacted in 1935 (Laws of 1935, p. 1925), Illinois specifically allowed such out-of-state corporations to loan money in Illinois without State regulation. "AN ACT to enable corporations in other states and countries to lend money in Illinois to enforce their securities and to acquire real estate as security" (Laws of 1897, p. 176), provided in pertinent part as follows:

> "Section 1. * * * [A]ny corporation formed under the laws of any other state or country, and authorized by its charter to invest or loan money, may invest or loan money in this State. * * * "

Thus, it is clear that when passed there was no legislative intent for the Act to apply to out-of-state finance companies.

This provision is codified as Illinois Revised Statutes 1973, chapter 32, paragraph 212. Although it was amended in 1953 and no longer specifically allows for out-of-state corporations to loan money in Illinois, there have been no substantive changes in the Consumer Finance Act which indicate the legis-

lature now intends the Act to apply to such corporations.

Neither do I believe that the Consumer Finance Act can be read to prohibit any out-of-state finance company from doing business in Illinois through the mails. Such a prohibition would be in violation of the Interstate Commerce Clause of the United States Constitution. While it may be that the State could regulate the operations of out-of-state finance companies as they relate to Illinois residents (a question on which I express no opinion), it could not entirely prohibit these operations. This conclusion was reached by the District Court of Appeal of California in People v. Fairfax Family Fund, Inc., 47 Cal. Rptr. 812 (1964). It stated at pages 813-814 as follows:

> "* * * It has been stated many times that the commerce clause, which has conferred upon Congress the power to regulate commerce, has not withdrawn from the State the power to regulate or control matters of local concern so long as Congress has not acted in the area, the regulation is nondiscriminatory and does not impose a burden on interstate commerce. (State of California v. Thompson, 313 U.S. 109, 61 S.Ct. 930, 85 L.Ed. 1219.) In the areas affecting the health, life and safety of their citizens, the courts have allowed reasonable and nondiscriminatory regulation. (Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440, 80 S.Ct. 813, 4 L.Ed.2d 852.)
>
> The Small Loan Law of California is legislation designed for the public welfare. It is primarily to protect the citizens of this state from fraudulent

> and unconscionable conduct of those in the lending business (In re Fuller, 15 Cal.2d 425, 102 P. 2d 321), and, as such, is a matter of local concern. Californians who deal, negotiate or obligate themselves to appellant should have the same protection as is afforded to Californians who deal with local small loan concerns. There is no question of discrimination in this case in that the statutes in question apply to both interstate and intrastate lending agencies alike. There is no barrier erected by the statutes in question to stop an interstate concern from doing its business in California * * * * (emphasis added.)

As previously stated, to apply the law as written to out-of-state loan companies, would be impossible. Also, an interpretation of the Consumer Finance Act to prohibit out-of-state finance companies from doing business by mail in Illinois would be in violation of the Interstate Commerce Clause of the United States Constitution.

A similar conclusion was reached by the Michigan Court of Appeals (Division II) in People of the State of Michigan, ex rel. Attorney General v. Fairfax Family Fund, Inc., Docket No. 19149, decided August 28, 1974. That court affirmed the trial court decision that the phrase "except that loans made by mail to Michigan residents shall be subject to the provisions of this Act" which was added to an act designated "Small Loan Business Licensing and Regulation" (MCLA 493.1 et seq.; MSA 23.667(1) et seq.), did not require the licensing of out-of-state loan

companies doing business by mail in Michigan. The Michigan statute had a provision similar to that of Illinois requiring a finding of convenience and advantage to the community served, before a license may issue. The court stated this provision and others would present practical problems to a company not located in Michigan and that the State could not require domestication.

I, therefore, am of the opinion that the Department of Financial Institutions under its current authority may not require out-of-state finance companies which have no operation in Illinois, except making loans by United States mail, to obtain a license under the Consumer Finance Act, supra, nor prohibit them from doing business in Illinois.

Very truly yours,

ATTORNEY GENERAL