

Barbara Reid Alexander
SUPERINTENDENT

(207)289-3731

Harry W. Giddinge
DEPUTY SUPERINTENDENT

Offices located at:

Central Building
Hallowell Annex
Hallowell, Maine



DEPARTMENT OF BUSINESS REGULATION
BUREAU OF CONSUMER PROTECTION
STATE HOUSE STATION 35
AUGUSTA, MAINE 04333

ADVISORY RULING #57
AUGUST 10, 1981

August 10, 1981

Dear

You have asked under what conditions an agricultural purpose transaction written prior to the effective date of P.L. 1981, c. 243 can be "extended, rewritten or renewed" after the enactment of this statute which amended 9-A M.R.S.A. §1-202(8-A) to exclude agricultural purpose transactions from the Consumer Credit Code. I presume that your question goes to whether or not 9-A M.R.S.A. §2-504, which establishes a maximum rate of increase on refinancing unpaid balances, is applicable after the effective date of P.L. 1981, c. 243 for a contract entered into prior to that date.

Amendatory or repealing laws are presumed prospective in nature unless there is legislative intent otherwise. Bowman v. Geyer, 127 Me. 351 (1928); Coates v. Maine Empl. Sec. Comm., 406 A. 2d 94 (Me., 1979). Here there is no evidence of legislative intent, such as a "savings" clause, concerning the retrospective effect of the repeal.

With respect to the effect of the repealer on contracts already entered into, courts have devised a variety of approaches to determine the impact of the statutory change. See Sands' Sutherland Statutory Construction (4th Ed.), §4104. The typical approach is to determine whether the change impacts vested rights arising out of the contract, in which case the statutory change is held not applicable, or whether it impacts inchoate rights or remedies, in which case the statutory change is operative with respect to the contract. Compare Maine v. Waterville Savings Bank, 68 Me. 515 (1878) with Holmes v. French, 68 Me. 525 (1878).

Section 2-504 of the Code can be viewed as a regulation of interest rates (type of usury). Such regulation is not usually retrospective in impact, that is, changes in the definition of usury do not relate back to contracts lawful at the date of their making. The difficulty here is that the contractual expectations at the time of the credit transactions encompassed the rights and remedies of The Maine Consumer Credit Code. The effect of the repeal on §2-504 of the Code requires a determination of the legal effect of a "refinancing." If it is viewed as a new contract or legal obligation, the argument that §2-504 is no longer applicable is persuasive. If the interest rate

limitations concerning a refinancing are viewed as a "right" embodied in the previous contract, the repeal may not be effective as to the unpaid balance only. (Clearly, new advances would not be subject to the Code after the effective date of P.L. 81, c. 243.)

The leading case, Holmes v. French, Ibid., suggests that the subsequent refinancing of an unpaid balance on an agricultural purpose contract is not now regulated by §2-504. The "right" to a

limitation on the rate of increase in such a refinancing does not arise by virtue of the contract itself, but depends on the law in effect at the time of refinancing. The Bureau will take this point of view.

Creditors should, however, note that P.L. 1981, c. 243 did not change the contractual obligation between the parties. The terms of the contract should be consulted to determine the consumer's rights and remedies.

Sincerely,

/s/ Barbara Alexander

Barbara R. Alexander
Superintendent

BA/bl