

PROFESSIONS AND OCCUPATIONS: PAWNBROKERS.

Pawnbroker may impose on pawn loan statutorily allowable service fee and storage fee, in addition to permissible monthly interest rates. Monthly or administrative fee of \$15 imposed on \$150 loan, not attributable to principal or allowable charge for collateral service, is considered interest above rate of interest pawnbroker may charge.

The Honorable C. Phillips Ferguson

Commonwealth's Attorney for the City of Suffolk

May 13, 1998

You ask whether § 54.1-4008 of the *Code of Virginia* prohibits the imposition of certain fees on pawn loans.

You relate that certain pawnbrokers charge a monthly or an administrative fee, in addition to a ticket fee of \$2 and regular monthly interest payments for a loan. You present two examples wherein both pawnbrokers impose on a loan of \$150, a \$2 ticket fee and monthly interest payments at a rate of five percent per month, with one pawnbroker imposing a \$15 "monthly fee" and the other pawnbroker imposing monthly a \$15 "administrative fee." You note that the monthly or administrative fee of \$15 equals ten percent of the loan amount. You inquire, therefore, whether the charges labeled "monthly fee" or "administrative fee" are tantamount to hidden interest charges, in violation of § 54.1-4008.

Chapter 40 of Title 54.1, §§ 54.1-4000 through 54.1-4014, governs the licensing and conduct of pawnbrokers. Specifically, §§ 54.1-4004, 54.1-4008 and 54.1-4013 provide for the imposition of certain charges. Section 54.1-4004 requires a pawnbroker to "deliver to the person pawning or pledging anything, a memorandum or note," containing certain information¹ for which a "one-time two dollar service fee may be charged." Presumably, the \$2 "ticket fee" referenced in your request is the service fee designated in this statute.

Section 54.1-4008 sets forth the permissible rates of interest which pawnbrokers may charge:

No pawnbroker shall ask, demand or receive a greater rate of interest than ten percent per month on a loan of \$25 or less, or seven percent per month on a loan of more than \$25 and less than \$100, or five percent per month on a loan of \$100 or more, secured by a pledge of tangible personal property.

Lastly, § 54.1-4013 allows a pawnbroker to charge "two percent per month in addition to the regular charges for the first three months, or part thereof," for storage of specific personal property listed in this statute.

Section 54.1-4008 governs "the full amount of interest pawnbrokers are allowed"² to charge. Following long-standing principles of usury, it is well-settled under Virginia law that "any charge which cannot be attributed to either principal or to an allowed charge for collateral service is considered interest."³ The monthly or administrative fee of ten percent of the loan amount in the hypothetical examples you provide is not attributable to either principal or an "allowed" charge for a collateral service. Consequently, these fees must be considered as additional interest.⁴

The primary purpose of statutory construction is to ascertain and give effect to the intent of the legislature.⁵ "Any construction that has the effect of impairing the purpose of [a statute] or which frustrates, thwarts or defeats its objects should be avoided."⁶ Chapter 40 plainly identifies the collateral charges and the rates of interest that may be imposed on pawn loans.⁷ The monthly fees at issue in the hypothetical examples you provide are not expressly authorized.⁸ Any construction of the statutes that would permit pawnbrokers to charge unlimited collateral charges beyond those expressly permitted, in my view, renders the statutes and usury laws meaningless.⁹

Accordingly, it is my opinion that a pawnbroker may impose on a pawn loan only those fees expressly authorized by §§ 54.1-4004 and 54.1-4013, in addition to interest at the rate permitted by § 54.1-4008.

¹ See § 54.1-4009 (requiring pawnbrokers to keep records of loans or transactions and credentials of person pawning or pledging goods).

² 1941-1942 Op. Va. Att'y Gen. 99, 99.

³ Garrison v. First Federal Savings and Loan, 241 Va. 335, 342, 402 S.E.2d 25, 29 (1991) (citing Chakales v. Djiovanides, 161 Va. 48, 75-93, 170 S.E.2d 848, 861-64 (1933)).

⁴ See Commonwealth v. Car Pawn of Va., Inc., 37 Va. Cir. 412, 416 (Richmond 1995).

⁵ See Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1996 Op. Va. Att'y Gen. 66, 67; *id.* at 195, 196.

⁶ Cartwright v. Commonwealth, 223 Va. 368, 372, 288 S.E.2d 491, 493 (1982) (quoting Gough v. Shaner, Adm'r, 197 Va. 572, 575, 90 S.E.2d 171, 174 (1955)).

⁷ See Ambrogi v. Koontz, 224 Va. 381, 297 S.E.2d 660 (1982); 1996 Op. Va. Att'y Gen. 186, 187-88 (where language of statute is clear and unambiguous, effect must be given to its plain meaning).

⁸ See 1970-1971 Op. Va. Att'y Gen. 406, 407 (stating that amount of interest on any loan "is the difference between the amount received by the borrower and the amount repaid by him, less certain *authorized* fees and costs") (emphasis added)). Compare 1977-1978 Op. Va. Att'y Gen. 495, 495 (holding that late charge agreed to by all parties to lease is not considered usurious because no lender-borrower relationship exists between landlord and tenant).

⁹ See 1970-1971 Op. Va. Att'y Gen., *supra*, at 407.