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ATTORNEY GENERAL

ADDRESS REPLY TO:  
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## Department of Justice

CONSUMER PROTECTION DIVISION

May 21, 1990

Dear

Your memorandum of April 26, 1990 requests the Administrator's opinion of the permissibility under the Iowa Consumer Credit Code (ICCC) of conducting examinations of non-resident lenders holding licenses under chapters 536 (regulated loan companies) or 536A (industrial loan companies). You note that correspondence in 1975 from then Assistant Attorney General Julian Garrett states that examination of non-resident licensees was not "contemplated" by the legislature. In previous conversations you mentioned that based in part on this letter the Division of Banking has not undertaken the examination of non-resident licensees.

In reviewing the applicable statutes, I agree with your conclusion that the appropriate licensing authority may, at their discretion, examine non-resident licensees. Iowa Code § 537.2305(1) states:

For the purposes of discovering violations of this chapter of securing information lawfully required, the licensing authority shall examine periodically at intervals the licensing authority deems appropriate, but not less frequently than is required for other examinations of the licensee by section 524.217, 533.6, 534.401, 536.10, or 536A.15, whichever is applicable, the loans, business, and records of every licensee, except a licensee which has no office physically located in this state and engages in no face-to-face solicitation in this state. In addition, the licensing authority may at any time investigate the loans, business, and records of any lender. For these purposes the licensing authority shall be given free and reasonable access to the offices, places of business, and records of the lender.

Accordingly, the licensing authority is not required to examine non-resident licensees at the same intervals it examines

resident licensees. However, this section also clearly states that the licensing authority "may at any time investigate the loans, business, and records of any lender". By its language the term "any lender" includes non-resident licensees and this provision provides authority for the Division of Banking to examine non-resident licensees when the licensing agency considers it appropriate.

The examination powers granted Iowa licensing authorities under this section extend to the Division of Banking's supervision of regulated and industrial loan companies. Iowa Code §§ 537.2305(1) and 537.6105(1) specifically includes the agency licensing lenders under chapters 536 and 536A. In addition, Iowa Code § 536.29(1) directs the superintendent of banking to enforce the ICCC "with respect to licensees, as provided in sections 537.2303, 537.2305 and 537.6105." Iowa Code § 536A.31(2) incorporates, among other sections of the ICCC, Article 2, part 3 of the Credit Code. Similarly, Iowa Code §§ 536.16(4) and 536A.30(5) only exclude non-resident licensees from "periodic" examinations, and do not restrict the Division's authority to conduct discretionary examinations of these licensees. Moreover, the exclusion from these Code sections of only periodic examinations implies the authority to conduct discretionary reviews.

In addition, the territorial jurisdiction of the ICCC generally extends to all lenders engaged in consumer credit transactions with Iowans, regardless of the creditor's location. See Iowa Code § 537.1201. Consequently, the State's ability to adequately enforce the ICCC hinges on its authority to examine the accounts of all creditors doing business with Iowa consumers. It would defeat the purpose of the ICCC territorial provisions to determine that although the Credit Code governed transactions between Iowans and out-of-state creditors, the State does not possess the authority to examine the Iowa accounts of these creditors for compliance with the Code.

The 1975 letter from Mr. Garrett to your office provides no support for its proposition that the legislature did not intend to permit the Banking Division to examine non-resident licensees for compliance with the ICCC. As discussed, the plain meaning of "the licensing authority may at any time investigate the loans business, and records of any lender" argues to the contrary of Mr. Garrett's conclusion. Furthermore, the legislative purpose behind the ICCC is furthered by permitting the examination of out-of-state licensees. Therefore, although for purposes of consistency we are generally reluctant to contradict prior advice from our office, in this instance Mr. Garrett's conclusion is not supported by the language of the pertinent statutes, and his opinion is superceded by this informal advisory letter.

Your second question is whether the Division of Banking may charge non-resident licensees for the costs of their examinations. Iowa Code § 537.2305(2) provides that licensees whose records are out of state shall either produce the records for the licensing authority, or "pay the reasonable and necessary expenses for the licensing authority . . . to examine them at the place where they are maintained." This provision does not contain a limitation excluding non-resident licensees from paying the necessary expenses of the Division's examination. Furthermore, Iowa Code §§ 536.10 and 536A.15 direct that examination costs are to be paid by the licensee; non-resident licensees are only excluded from these sections for the purposes of periodic examinations, not discretionary examination expenses. See Iowa Code §§ 536.16(4), 536A.30(5). Consequently, the ICC and chapters 536 and 536A authorize the Division of Banking to charge non-resident licensees the full, reasonable costs of their examination.

I hope this letter is responsive to your questions. Please note that this letter is an informal advisory letter and is not a formal opinion of either the Administrator or the Attorney General.

Sincerely,



Peter Kochenburger  
Assistant Attorney General