

**Whitney, Jessica [AG]**

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**From:** Whitney, Jessica [AG]  
**Sent:** Wednesday, March 19, 2008 4:07 PM  
**To:** Whitney, Jessica [AG];  
**Cc:** Brauch, William [AG];  
**Subject:** RE: Interest Rates

Please also note that this is merely an informal advisory opinion; it is neither an opinion of the Attorney General, nor a formal ruling by the ICCC administrator.

Again, if you have further questions, please feel free to contact me.

Thanks,  
 Jessica

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**From:** Whitney, Jessica [AG]  
**Sent:** Wednesday, March 19, 2008 3:59 PM  
**To:**  
**Cc:** Brauch, William [AG];  
**Subject:** Interest Rates

Magistrate

Sorry it has taken me so long to get back to you, I have been doing a lot of research into this issue. I have found an official Attorney General Opinion that this office issued in 1980 that I believe answers your question. It is 1980 Iowa Op. Atty. Gen. 708, 1980 WL 25994 (Iowa A.G.). Here is a link to the entire report, although I will paste the applicable section below: <http://weblinks.westlaw.com/Search/default.wl?RP=%2FWelcome%2FFrameless%2FSearch%2Ewl&n=1&Action=Search&bQlocfnd=True&DB=ia%2Dag&Method=TNC&Query=%22Post%2DJudgment+Interest%22%0D%0A%0D%0A&RLT=CLID%5FQRYRLT2831563&RLTDB=CLID%5FDB2731563&sp=ia%2Dag%2D1001&ssl=n&RS=WEBL8.02&VR=2.0&SPa=ia-ag-1001>

The opinion deals with the question of post-judgment interest. As to pre-judgment interest, as we discussed on the phone, Iowa Code 535.2 does not expressly permit credit card companies to charge rates in excess of the rate give in 535.2, however, it does not prohibit them from charging these rates. Credit card companies are able, under Iowa Code section 537.2402 and federal banking regulation (federal banks, credit unions and thrifts do not have to comply with Iowa usury law due to federal preemption) to charge unlimited interest rates. They can do this because Iowa Code chapter 535 is a general usury state, while Iowa Code chapter 537 is a specific usury statute. As this office stated in a 1979 Opinion, "Chapter 537, 1979 Code of Iowa, also known as the Iowa Consumer Credit Code (ICCC) provides an exception to the usury ceiling imposed by Chapter 535. The ICCC applies only to consumer credit transactions as defined by the five point test set out in section 537.1301(13). Under the terms of the ICCC, creditors involved in the consumer credit transactions may contract for and receive finance charges at rates in excess of rates allowed under the general usury statute." Therefore, on pre-judgment interest the limits (or lack thereof) under 537 apply on credit card transactions.

For the post-judgment analysis, see the opinion below. The laws cited below are still reasonably the same with no changes that would alter the analysis.

It is worth noting that there is one federal case concerning Iowa Code section 668.13(2), *R & B Appliance Parts, Inc. v. Amana Co., L.P.*, 258 F.3d 783 (8<sup>th</sup> Cir. 2001). Although the court held in that case that statutory restrictions on interest rates only applied in cases where there wasn't a contractual provision, the court relied on an only partial interpretation of section 668.13(2) and an inaccurate citation of section 668.13(3). For example, the court cited to the first portion of subsection 2 in its holding, but entirely omitted the limiting language referring to section 535.2 (see emphasized portion above). Additionally,

the court cited to section 668.13(3) in holding that statutory rates only apply when a rate has not been fixed by contract. However, that section doesn't refer to contractual rates at all and instead refers to federal reserve rates. For these reasons, I don't believe the federal opinion is a very persuasive or accurate reflection of Iowa post-judgment interest law.

The opinion:

### ◀Post-Judgment Interest▶

\*6 As to each of the above fact situations, you asked what rate of interest would be applicable after judgment. The application of **◀post-judgment interest▶** is controlled by § 535.3: Interest shall be allowed on all money due on judgments and decrees of courts at the rate of seven\* cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding the maximum applicable rate permitted by the provisions of section 535.2, which rate must be expressed in the judgment or decree.

~~\*Interest on judgments and decrees prior to July 1, 1973, see 65GA, ch 275, § 2~~

The 7% rate specified in § 535.3 was raised to 10% by H.F. 163 effective January 1, 1981.

**◀Post-judgment interest▶** at the rate of 7% per year may be charged in each of the fact situations you presented unless the underlying obligation was founded on a contract fixing a different rate of interest. If there was an underlying contract, the contract rate will apply post-judgment if that rate is expressed in the judgment and it does not exceed the maximum applicable rate permitted by § 535.2.

New H.F. 2492 poses an exception to Chapter 535.3 by authorizing the accumulation of interest on judgments, in certain limited situations, at rates in excess of Chapter 535.2 rates and in the absence of an underlying written agreement.

The rate of a finance charge imposed pursuant to this section is applicable to a judgment in an action on the account, notwithstanding section five hundred thirty-five point three (535.3) of the Code.

H.F. 2492, § 7(7)

Since judgments do not bear interest at common law, Arnold v. Arnold, 258 Iowa 850, 140 N.W.2d 874, (1966), authority to apply interest to judgments is purely statutory and cannot be extended beyond the statutory limitations. Under the provisions of Chapter 535.3, **◀post-judgment interest▶** may not exceed the maximum applicable rates permitted by § 535.2; H.F. 2492 is the only statutory exception to that rule. Therefore, statutes such as Chapter 536, 536A and 537 which authorize the charging of interest, under special circumstances, at rates in excess of rates allowed by § 535.2, cannot be read to provide independent authority for a judgment creditor to receive **◀post-judgment interest▶** in excess of rates allowed by § 535.2. This is true even if the judgment is founded on a contract fixing the rate of interest in excess of rates allowed by § 535.2. Finally, in your letter of April 14, 1980, you presented a fact situation in which a legal action is founded upon an interest-bearing note. You asked whether judgment could be entered for the amount of the principal plus interest when the effect would be that **◀post-judgment interest▶** would be added to pre-judgment interest. You inquired, further, whether **◀post-judgment interest▶** may legally be compounded.

The right to **◀post-judgment interest▶** is purely statutory, Arnold, and must be distinguished from the right to pre-judgment interest which is founded on contract. In Iowa, **◀post-judgment interest▶** is mandatory; it will accumulate even if the judgment fails to expressly provide for the accretion of interest. Pre-judgment interest, on the other hand, is an element of damages and is left to the discretion of the court. Militzer v. Kal-Die Casting, 41 Mich.App. 492, 200 N.W.2d 323 (1972). Since the right to pre-judgment interest is totally independent from the right to statutory **◀post-judgment interest▶**, the existence of the right to **◀post-judgment interest▶** should not be a factor in determining the amount of interest in the form of damages to which a judgment creditor is entitled.

\*7 In the example you presented, a court may exercise its discretion to enter a judgment for the principal amount plus interest, regardless of the fact that the effect would be that statutory **◀post-judgment interest▶** will accumulate on the pre-judgment interest.

. . . it has generally been held that a judgment bears interest on the whole amount thereof, although such amount is made up partly of interest on the original obligation . . .

47 C.J.S., Interest, § 21

Although the Iowa Supreme Court has not spoken to the issue of whether **◀post-judgment interest▶** may be compounded, it is the general authority that 'compound interest on a judgment generally is not recoverable, unless it is authorized by statute.' Id. No Iowa statute allows **◀post-judgment interest▶** to be compounded. Therefore, although **◀post-judgment interest▶** may be added to pre-judgment interest, **◀post-judgment interest▶**, itself, may not be compounded.

I hope this helps, if you have any follow-up questions, please let me know.

Regards,  
Jessica

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