



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

AL ENDSLEY, Commissioner

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July 15, 1986 86-3

Mr. William H. Daniel
McGinnis, Lochridge and
Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

Dear Mr. Daniel:

You have asked the opinion of this office as to whether any restrictions or requirements under Texas law apply to the charging of points or the rate of interest on financing of yachts and other vessels qualifying as vessels on which liens can and will be filed under the Preferred Ship Mortgage Act, 46 USC Section 926(d).

Section 926(d) of the Ship Mortgage Act, hereinafter, the "Act", reads as follows:

"(d) A preferred mortgage may bear such rate of interest as is agreed by the parties thereto."

The courts have uniformly construed this language to the effect that the Act has preempted all state law otherwise applicable to the maximum rate of interest to which parties could agree in connection with the construction or purchase of vessels covered by that Act. J. Ray McDermott & Co., Inc. v. The Vessel Morning Star 457 F2d 815 (5th Cir. 1972), Walter E. Heller and Co. v. O/S Sonny V. 595 F2d 968 (5th Cir. 1979), Fourchon, Inc. v. Louisiana National Leasing Corporation, et al. 723 F2d 376 (5th Cir. 1984).

You have additionally asked if Texas law would apply so as to restrict the charging of points under such a contract. We have found no authority under Texas law which would allow points to be charged under the circumstances herein involved and conclude that no such authority exist unless it is granted by the Act. I might add that we have found no cases decided under the provisions of the Act which authorize points under that doctrine.



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Fourchon, Inc., supra is the leading case involving Sec. 926 (d). Under the terms of the contract therein considered the lender attempted to collect interest on interest contrary to applicable Louisiana law barring the practice of compounding interest. The contract was found to be subject to the Act and the court held that Louisiana law had been preempted allowing interest on interest if provided for in the contract. Citing The Vessel Morning Star, supra and O/S Sonny V., the court stated: ". . . Because application of state usury laws . . . would contravene the freedom-of-contract principle of section 926, usury laws have no application in actions involving a preferred ship's mortgage."

Under the authority of the above stated Fifth Circuit cases we are of the opinion that the courts would allow the charging of points under the authority of the Act and we find that when the Act is applicable, such mortgage may bear such rate of interest as is agreed by the parties thereto and that the parties may agree to the charging of points.

Sincerely,



Al Endsley
Commissioner