



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION NO. 85-25

January 28, 1985

Mahlon A. Martin, Director
Department of Finance
and Administration
P. O. Box 3278
Little Rock, AR 72203

Dear Mr. Martin:

This letter is in response to your recent request for an opinion regarding a choice of remedies in the event of a usurious contract.

Your question is as follows:

May the Director of the Office of State Purchasing amend a usurious contract to conform with the current interest limit? If so, may the vendor be excused from any penalties for such an infraction?

The Director is charged with faithfully performing the duties of his office which include implementing the Arkansas Purchasing Law. Among the purposes and policies of that law relating to public procurement are increasing public confidence, fair treatment of all parties dealing with same, increased economy through fostering effective competition and a system of quality and integrity. The Director has certain express, as well as implied powers, incidental thereto, essential to promoting and benefiting the accomplishment of those purposes. 63 Am. Jur. 2d, Public Officers and Employees §303.

It is clear that upon discovery of a usurious contract, the Director must take some action to promote the State's interest. The obvious alternatives include amending the contract by lowering the interest rate to comply with the law or pursuing the remedies for usurious contracts. Amendment 60 voids usurious contracts as to unpaid interest and permits recovery of twice the amount of interest paid.

The Director as a public officer occupies a fiduciary relationship to the State, State v. Broadway, 192 Ark. 634, 93 S.W.2d 1248 (1936), and as such must exercise his judgment and discretion to accomplish the purposes of the Purchasing Act. It follows that the Director would appear to have the incidental power either to amend a usurious contract to pay a lawful interest rate or to pursue the remedies provided by Amendment 60 depending upon his judgment of which action will foster the best interest of the State and best accomplish the purposes of the Arkansas Purchasing Act.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Thomas S. Gay.

Sincerely,


STEVE CLARK
Attorney General

SC:TSG:jkb