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LEGISLATIVE REMEDIES POSSIBLE UNDER THE MISSOURI CONSTITUTION OF 1945

ALLEN McREYNOLDS*

I have been asked to prepare an article under the above caption. I am frank to say that I find it difficult to determine just what is expected. I think I thoroughly understand Section 44 of Article III of the Missouri Constitution of 1945. Just what remedy should be discussed, I find myself at a loss to determine. Remedy for what?

Section 44 of Article III of the Missouri Constitution of 1945 is a very simple provision. There are two sentences. It reads:

“No law shall be valid fixing rates of interest or return for the loan or use of money, or the service or other charges made or imposed in connection therewith, for any particular group or class engaged in lending money. The rates of interest fixed by law shall be applicable generally and to all lenders without regard to the type or classification of their business.”

At the time of the Constitutional Convention of 1945, there were various laws upon the statute books of Missouri fixing special rates of interest for the benefit of various classes of lenders. All of these rates were higher than the foundation rates fixed by the Missouri statute. All this Section 44 does is to prohibit laws affording special rates of interest for the benefit of any class of lenders, and providing that rates fixed by law shall be applicable to all lenders. This provision was adopted because the members of the Constitutional Convention of Missouri were of the opinion that lenders needed no protection under the law; that any statutes enacted for the purpose of policing loans should be written for the benefit of the borrower and not the lender. With this provision adopted, Missouri found itself with all of the special-benefit-for-lenders statutes repealed (Household Finance v. Shaffner*). And with this kind of a clean slate, it remained for the legislature of Missouri to adopt such statutes as might be appropriate

*Practicing lawyer in Carthage, Jasper County, Missouri. Senator McReynolds has been identified with public affairs in the state for a number of years; a member of the Missouri Senate for eight years, and a delegate at large to the Constitutional Convention of 1944-1945. In the preparation of this article he was assisted by James Reeves, of Caruthersville, Missouri, a senior law student who graduated with honors from the Law School of the University of Missouri in the Class of 1951. Mr. Reeves contributed substantially to the research work.

1. 356 Mo. 808, 203 S.W. 2d 734 (1947).
to accomplish two things: (1) The establishment of interest rates on any basis other than the classification of lenders; and (2) provisions for the policing of loans or lenders on any other basis than one establishing interest rates. (*Household Finance v Shaffner, supra*).

Section 44 of Article III of the Missouri Constitution is unique. There is no provision of similar character to be found in other state constitutions. Because of these facts, it would appear important to present the reasons which led to the adoption of Section 44 of Article III by the Constitutional Convention of 1944-1945. Once these reasons are clearly understood, the purposes of Section 44 are readily apparent. The symposium presented in this study embraces various articles which deal generally with the Small Loan Problem in Missouri. A study of that problem would certainly be incomplete without a clear understanding of what transpired in the Constitutional Convention which adopted Section 44 of Article III of the present Constitution.

Having discussed the assignment, it remains for the author of this article to define the area which he will treat.

I. Historical origin of Section 44 of Article III of the Missouri Constitution of 1945.
   (a) Legislative background prior to the convening of the Constitutional Convention.
   (b) History and reasons for the adoption of Section 44 of Article III.

II. Legislation available under Section 44 of Article III
   (a) The Legislature has the right to provide for any interest rate it deems fair and reasonable on any particular type or class of loans, so long as it does not place any limit upon the lenders who may avail themselves of these interest provisions.
   (b) The Legislature may provide for the policing of lenders or loans so long as it does not transgress the limitations of Section 44.
   (c) Current Legislation.

III. Conclusion.

I

HISTORICAL ORIGIN OF SECTION 44, ARTICLE III
OF THE MISSOURI CONSTITUTION OF 1945

Section 44 of Article III of the Missouri Constitution was adopted in an effort to assist in the solution of the Small Loan Problem in this state.
The purpose behind the provision was to open the competitive money market to all borrowers. The effect of the lender classification in Missouri had been to interfere with the opportunity of borrowers to seek various sources of loans. Section 44 was written to prevent the continuance of that situation.

The writer of this article has lived in Missouri all of his life. He has been a student of the history of the State, an observer—and often a participant—in the political and economic activities which have developed in the State from time to time.

(a) Legislative Background Prior to the Convening of The Constitutional Convention

One of the problems which has been the source of constant legislative agitation has been interest rates on small loans. This has been particularly true since the year 1927, at which time the Missouri Legislature adopted the so-called Russell Sage Model Act, which authorized 3½% per month, or 42% per year upon small loans. Since the adoption of that act, the rate and the terms of the act have been under constant challenge. It was modified in 1929 by reducing the rate from 3½% to 2½%. In 1939 the interest rate was increased to 3% and remained at that figure until 1945.

The Russell Sage Foundation was founded in 1907 by a charter issued by the New York Legislature. The original endowment was $10,000,000 and Mrs. Russell Sage was the donor.

The Foundation immediately adopted a program of research in the small loan field. Arthur H. Ham was a pioneer research worker for the Russell Sage Foundation in the field of small loans, and is today a Trustee of the Foundation.

The lenders of small amounts of money at high rates of interest realized the need for a national organization.

"The need for some national organization to facilitate cooperative relations among lenders was recognized fairly early . . . and in 1916 the American Association of Small Loan Brokers was formed for this purpose. The first important activity of this body was its cooperation with the Russell Sage Foundation in drafting the Uniform Small Loan Law."

"Within a few years many unlicensed lenders began to recog-
nize the advantages that would accompany legal sanction of their operations, and in 1916 representatives of commercial lenders, remedial loan societies and the Russell Sage Foundation agreed upon a compromise plan for a Uniform Small Loan Law.”

“The passage of the original Small Loan Act in the State of Illinois was in 1917, and the Uniform Small Loan Law was the model. This Act legalized a rate of interest greater than 7% per annum on loans of $300 or less, and licensed lenders. The rate legalized was 3½ % per month.” (Coogan Report)

The most unbelievable part of this whole story is the fact that the Russell Sage Foundation was able to sell many legislatures in the United States an interest rate of 3½% per month, or 42% per annum, as a reasonable rate of interest. The only explanation which can be given for that salesmanship is that the proposal came from a charitable trust and was offered as the solution for a sociological problem. Of course the average legislator had little knowledge of sociological problems. He was very much impressed with the fact that a charitable organization was concerning itself with the problems of the small borrower, and naturally gave the proposition a hearing. It was this device which put the camel’s head under the tent. Once the subject was under consideration, it seemed rather obvious that loans made to this type of borrower would hardly be inviting, and that somebody must have an inducement to make the proposed loan. If the rate of interest proposed had been suggested without “benefit of clergy,” to-wit, the charitable front, it would not have been entertained for a single moment by any legislature. Given this introduction, the legislators listened and accepted without investigation the declaration that the rate proposed was necessary in order to support the plan. Of course the legislator recognized the fact that the persons theoretically benefited would be the people called upon to pay the costs of the operation. As one writer put it, “It was from social agencies that the small loan companies learned the trick of immunity by legislating unconscionable rates under the guise of serving the

3. Id. at p. 31.
4. Numerous references are made to the Coogan Report. Under a resolution adopted by the Illinois State Senate on April 23, 1943 (Resolution 23), Gertrude N. Coogan of 135 LaSalle Street in Chicago, Illinois, was employed by the Special Investigating Committee on the Operations of Small Loan Companies in Illinois. A preliminary report dated May 10, 1943, was made available to the members of the Missouri Constitutional Convention of 1944-1945. All references to the Coogan Report are based upon material made available from this source.
forgotten man, the necessitous borrower.” Of course it becomes at once apparent that if the returns on such loans result in large profits to the operators under such a program, the justification for the rate fails. It is asserted by Dr. Kelso in one of the papers in this symposium that it is the duty of the State “to stand at the shoulder of the family man who is in hard straits for family support, yet without bargaining power to see that he has fair treatment.” He adds that this “should be the minimum of public concern for his welfare, and that of his wife and children.” To this statement we agree. It also seems self-evident that if the rate of return enables those engaged in loaning money under this legislative arrangement to enjoy large profits, the rate should be reduced. My discussion shall not have to do with the sociological side, but with the interest rate sought to be charged under the so-called Small Loan Acts.

In discussing the work of the Sage Foundation in the lending field, the following statement was made by Myron H. Bone, Secretary of the American Industrial Bankers in an address delivered in St. Louis on March 31, 1943:

“It is worth remembering, however, how one phase of that social service work has been conducted since 1916. The leading loan sharks of that day were promised assistance in getting usury laws amended for their benefit if they would agree to abide by the provisions of the Russell Sage Small Loan Bill whenever it became State Law.

“The deal was made and Leon Henderson went to work on the task of convincing state legislative bodies that 42% interest legally collected by licensed companies on loans up to $300 was preferable to a higher rate, illegally collected by furtive individuals on vest pocket loans of $5 to $70. The plea was for a law to correct the loan shark evil. Russell Sage research workers reported that it existed chiefly in the loaning of very small sums of money. Dr. Nugent wrote a treatise to that effect, but the bill raised the limit to $300, or more than four times the maximum amount of cash most needy borrowers could get from an illegal lender . . .”

“The pattern devised and developed by Leon Henderson varied little from state to state, and Dr. Nugent testified to that effect last week before your Missouri legislative investigating committee. He qualified his statement only to the extent that the

5. Report of Mr. Kenton E. Cravens, vice-president, Cleveland Trust Company (now with Mercantile Commerce and Trust Company in St. Louis) in report, as President of the Consumer Credit Council to the Executive Council of the American Bankers Association at the Spring meeting in April, 1943.
Russell Sage Foundation had found it unnecessary to 'carry the ball' since 1929. The petty money lenders now need follow only the well-beaten path cut out for them by their New York patron. . . ."

"Well, if you lend a friend $5 for a week and you charge him as much as one copper cent for interest, you have violated the Missouri usury statute. Interest at 8% on $5 is only 40 cents for a year. If you charge more than $1.5 cents a month on your $5 loan, you're a loan shark. If, as is frequently the case, the vest pocket lender makes a charge of $1.00 for a loan of $10.00 for a month, the rate of interest is 120% per annum. This is exorbitant, of course, and yet how many of you would take those 10 to 1 gambles on strangers?"

"You can readily see, however, that when the legalized petty money lenders presented quantities of this kind of evidence to Better Business Bureaus, the managers went to work on the problem. Civic leaders would take up the popular hue and cry against the loan sharks. A legislative investigation would be demanded and so it would seem that the poor devil sometimes in need of $10 until payday really was going to get relief from his tormenters. Then the Russell Sage representative would appear and recommend the bill approved in 1916 by the loan sharks. Resolutions would be adopted by labor unions, church groups, chambers of commerce, bar associations, and other organizations. Their gullibility was rather surprising, but anyone who argued that the Russell Sage bill might not be the best solution to the problem was immediately tarred as a friend of the loan shark. Why didn't anyone ever do a little bit of independent research instead of accepting as gospel the preachings of the Foundation in New York City?"

My first personal contact with the problem was in 1939. Shortly prior to the convening of the 1939 General Assembly a vigorous campaign of publicity was carried on both in Kansas City and St. Louis. This publicity was directed against the so-called loan sharks. Through some means the Junior Bar Associations of those two cities were enlisted in the campaign. Before long, the campaign became a crusade, with the result that soon after the Legislature convened, a majority of the members of the lower House of the General Assembly, headed by the Speaker of the House, introduced into the General Assembly a bill which constituted what amounted to a re-enactment of the original Russell Sage Foundation Act adopted in Missouri.

6. Myron H. Bone was Secretary of the American Industrial Bankers. He made numerous addresses in connection with the Small Loan Problem. The one delivered in St. Louis on March 31, 1943, supplied the quotation made.
The 1939 legislation increased the rates from $2\frac{1}{4}$% per month up to 3% per month. The arguments presented in connection with the proposed legislation justified the rate of 36% per annum on the statement that loans of this type could not be made at a lower rate of interest; that provision for this type of loans was indispensable to society; and that those engaged in making the loans could not possibly survive without a rate of this kind; that on account of the hazard in the business, the losses were excessive; and that only with such a rate could agencies willing to make loans of this type be sustained.

I think the average legislator lacked any real information on the subject. The proponents of the legislation were young men representing the Junior Bar of Kansas City and St. Louis. They spent many days in the halls of the General Assembly, advocating the enactment of these bills as protection against so-called loan sharks. No doubt existed in the halls of the General Assembly as to the sincerity of these young men. But some doubt did exist as to the justification for the rate of interest they were urging. For example, it was suggested that severe criminal penalties might be fixed for violation of the loan laws. This was objected to on account of the enforcement burden. It was then suggested that the loan laws could provide penalties which would destroy loans which violated the statutory provisions limiting rates of interest or other terms. But all of these suggestions were rejected, on the statement that the only solution to be found was the provision for high interest rates which would attract investors to loans of this kind.

As an interesting fact, it can be stated that not too long after the passage of this bill, the young man who led the crusade publicly appeared as counsel for important small loan companies.

Every recurring Legislature found the small loan problem in the foreground. Naturally the complaints originated in the larger cities. These complaints were levelled against the practices in the small loan companies and the rates of interest charged. There was not too much difference between the substance of the complaints levelled against the licensed operators and the so-called loan sharks. The basic complaint was of unfair and unreasonable treatment of the necessitous borrower on account of the high cost of the loan accommodation.

The issue between the supporters of the Russell Sage Foundation Statute, or its equivalent, and the objectors, seemed to reduce itself down to the two inquiries: (1) The sociological problem; and (2) the economic
problem. Without even considering the sociological field, it seems apparent to the laymen that if the rates of interest proposed by the Russell Sage Foundation in 1916 and adopted in numerous states in the Union, have permitted companies formed for the purpose of operating under that Law to enjoy large profits and accumulate enormous wealth in the last 30 years, the rates certainly can not be justified. It is to be remembered that the loan field covered is that of the so-called necessitous borrower. It is also to be remembered that he is the man who can least afford to pay and that the rate set up in these statutes was established on the theory that the risk involved in making this type of loan was so great that money could only be procured if rates of this type were authorized.

It also seems apparent that if the operations of various companies engaged almost exclusively in this type of business during the last thirty years have shown a very large profit return, and built up an enormous capital structure, two things must be concluded; (1) that the losses anticipated have not asserted themselves; and (2) that the rates being charged are excessive. It was a demonstration of facts supporting these conclusions which brought about the adoption of Section 44 of Article III in the Constitution of Missouri in 1945. It will be the author’s purpose to present to the readers the information which led the Constitutional Convention of 1945 to support Section 44 of Article III.

b. History and Reasons for Adoption of Section 44, Article III of the 1945 Missouri Constitution

It seems first desirable to set out the record showing the origin of Section 44 and the development which occurred in the consideration of that section.

On November 17, 1943, Delegate Edwin J. Hogan, Jr., of St. Louis introduced Proposal 217. This proposal fixed a maximum rate of 8% per annum interest for the use of money, and fixed severe penalties for the violation of the Constitutional provision. It provided that the General Assembly should make laws to enforce the provision. Proposal 217 was

7. The Missouri Constitutional Convention of 1944-1945 published a five-volume report on the work of the Convention. This report does not include the debates. The first three volumes contain the Journal of the Convention, together with various indexes of the Journal. Supplemental Volume Four contains the Proposals. Supplemental Volume Five contains the Files. The report of various proceedings of the Convention was taken from these records.

8. See n. 7, supra.
referred to the Committee on Miscellaneous Provisions. On February 10, 1944, that committee made a report on various matters pending before it, with certain recommendations. This report recommended the adoption of 12 sections to the new Constitution. Section 12 provided:

"The maximum rate of interest which may be charged by written contract for the loan or forbearance of money shall be ten percent (10%) discount per annum and such interest shall be in full compensation for the loan and no additional charges shall be made."  

The report of the Committee was under consideration by the Convention on March 28. On that date, Section 12, above set out, was taken up. Mr. Finnegan moved that the rate of 10%, fixed in said Section, be increased to 18%. Mr. Julien offered a substitute, striking out Section 12. Further consideration of the section was postponed. On March 29 the consideration of Section 12 was resumed. Mr. Finnegan withdrew his amendment. Mr. Julian withdrew his substitute. Thereupon, Mr. Finnegan offered a substitute for Section 12, which read as follows:

"No law shall be valid fixing rates of interest or return for the loan or use of money for any particular group or class engaged in the loaning of money. The statutory rates of interest which may be fixed by law shall be applicable generally and to all persons or corporations loaning money without regard to the type or classification of their business."  

The debate on the adoption of the amendment continued for several days. All of the proposed amendments were rejected, except one offered by Mr. Shepley on March 30, which modified the original Finnegan Proposal by inserting in the first sentence after the word "money" the following language: "... or the service or other charges made or imposed in connection therewith. ..." As a result of this procedure, the Section took final form. 

Delegate Edwin J. Hogan, Jr., was from St. Louis. His Proposal 217 was, of course, directed against the small loan companies. It provided for a maximum rate of 8% per annum interest for the use of money, and fixed severe penalties for the violation of the provision. When the Proposal reached the Committee, it was modified by providing a maximum rate of

9. Ibid.
11. See n. 7, supra.
12. Ibid.
14. See n. 7, supra.
interest, for the loan or forbearance of money, of 10% discount per annum. (Of course 10% discount is substantially in excess of a flat 10% rate from date).

After the Committee report, Hogan solicited support for his proposal. It was pointed out to him that a Constitutional provision fixing a rate of interest was of doubtful wisdom and would probably be defeated, and the suggestion made that some other proposal might be formulated which would be effective to accomplish the purposes he desired. After considerable discussion, the original form of the substitute for Section 12 was agreed upon.

The report of the Committee on Miscellaneous provisions was before the Constitutional Convention for consideration. Section 12, previously quoted, fixed "10% discount per annum" as full compensation for the loan. When the Convention reached the consideration of Section 12 of the report, Mr. Finnegan offered his substitute which would be effective to destroy the classification of lenders enjoying special rates under various statutes in Missouri.

In support of the substitute, it was pointed out that Missouri had two statutes which were applicable generally to rates of interest. One of these was the legal rate of 6% which was applicable in all cases where no rate was fixed on an obligation; the second was the contract rate not to exceed 8%, which enabled the parties to contract among themselves for interest rates, so long as they did not exceed 8%. It was also pointed out that the Legislature had, from time to time, enacted various statutes, based on classification of lenders, authorizing rates in excess of the foundation rates fixed by the Missouri General Law. These statutes were on the so-called Small Loan Statute, providing for 3% per month, or 36% per annum, the Loan and Investment Act, which provided for a higher rate; the Pawnbroker's Act, which provided for a higher rate; and various other acts, all of them based upon the classification of lenders.

It was argued that the class of people who needed protection were the borrowers; that the lender was always able to protect himself; he was not compelled to make any loan, and could, within the law write the conditions which would afford him interest on his money and protect the return of the original loan.

The history of the small loan legislation in Missouri was also discussed. It was pointed out that all of the campaigns which resulted in the enactment of so-called small loan legislation with high rates of interest were based upon the concept that the legislation was being enacted for the benefit of
the necessitous borrower, and that he was primarily the beneficiary of the legislation; and that the rates were fixed because the risks incident to such loans were very high, the cost of making them was very great, and that only with such a rate could loans of this character be made.

It was then asserted on the floor of the Convention that small loan companies who were beneficiaries of these special statutes in Missouri and elsewhere were a very profitable enterprise; that they had large capital structures; that the profits made by them were much larger than the average business classifications; that the salaries paid to their executives were very high; that they were borrowing money at low rates of interest and re-lending it at high rates; that in some instances the companies were so organized that a holding company controlled the local companies and made loans at excessive rates to the local companies, with the result that the reports of the local companies, which were subject to the inspection of local authorities, showed only a limited return upon their operations.

From the material submitted to the Convention, it appeared that there were four major operators of chain offices in the small loan business in the United States. They were the Household Finance Corporation of Chicago; the American Investment Company of Illinois, and its subsidiaries, the Public Loan Companies; the Commonwealth Loan Company of Indianapolis; and the Beneficial Industrial Loan Corporation of Delaware.

At the time of the Constitutional Convention, official statements from all of the above companies were available in printed form, and were submitted to members of the Convention.

In addition to statements from these companies, the members of the Convention had the benefit of a report of a Committee under Senate Resolution No. 23 of the Illinois Senate. This committee made an investigation of the small loan companies in Illinois in 1943. The Committee employed Gertrude N. Coogan, with offices in the Field Building, La Salle Street, in Chicago, who is an accountant specializing in analysis of economic trends and management of investment accounts. The report sets out in considerable detail the facts with reference to the Household Finance Corporation, with its headquarters in Chicago; the American Investment Company of Illinois; both of which were operating in Missouri; considerable information with reference to the Russell Sage Foundation and the uniform small loan laws; comparative statements showing the net results obtained by the small

15. Taken from the Coogan Report, supra, n. 4.
legislative remedies

loan operators; and also a comparison of the return on invested capital, net profits to owners, of various business corporations, and the Household Finance Corporation. The material in this report is too extensive to set out in detail, but such excerpts from it will be presented to permit the reader to have a perspective on the material presented to the Constitutional Convention in connection with the debate on Section 44.

The Household Finance Corporation was incorporated in Delaware on July 21, 1925. On September 1, following, it acquired the assets of an unincorporated predecessor money-lending business, part of which was operated by the Mackey Finance Company (Louisville, Kentucky). According to the information made available to the Convention, the corporation had customer’s notes receivable according to the following table:

Upon incorporation in 1925.......................................... $6.6 Millions
December 31, 1941 ........................................................ 86.4 Millions
December 31, 1942 ........................................................... 71.7 Millions

Household Finance is reputed to be the second largest small loan chain in the United States. During 1942 Household Finance Corporation made 894,096 loans amounting to $145,158,726. Nearly 40% of these loans were for $100 or less. On February 1, 1934, the corporation had 178 offices in 113 cities in 14 states and Canada; on February 1, 1942, 323 offices in 205 cities in 24 states and Canada.

The control of the corporation for many years was limited to a small number of individuals who were active in the management of the company. Among them was Arthur H. Ham, who was a trustee of the Russell Sage Foundation.

According to the statement of December 31, 1942, the total consolidated capital stock and surplus aggregated $25,801,935. Cash dividends paid out 1935 to 1942 inclusive amounted to $33,377,812. Tabular information for 1934 to 1942 inclusive is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Gross Income*</th>
<th>Net Income** Available For Dividends</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1934</td>
<td>$12,364,225</td>
<td>$3,643,646</td>
<td>29.46***</td>
</tr>
<tr>
<td>1935</td>
<td>12,540,287</td>
<td>4,203,926</td>
<td>33.52</td>
</tr>
<tr>
<td>1936</td>
<td>14,656,628</td>
<td>5,268,285</td>
<td>35.94</td>
</tr>
<tr>
<td>1937</td>
<td>17,513,849</td>
<td>6,382,155</td>
<td>36.44</td>
</tr>
<tr>
<td>1938</td>
<td>17,904,047</td>
<td>6,160,912</td>
<td>34.41</td>
</tr>
</tbody>
</table>

17. Coogan Report, supra, n. 4.
*Total interest collected from small loan borrowers.

**Total dollars left for stockholders after all expenses, including taxes, were paid.

***Out of each dollar of interest collected from small borrowers, 29.4 cents were pure profit (gravy) for the owners of the stock. This 29.4 cents pure profit was left out of each dollar collected as interest, after heavy charges for management, salaries, travel, etc.

In 1937 the pure gravy was 26.44 cents out of every dollar collected as interest from small borrowers.

The remuneration received by the officers and directors of the Household Finance Corporation in 1935 to 1941 appears in the following table:18

| Remuneration Received by Officers and Directors of Household Finance Corporation |
|-------------------------------------------|---------------------------------|
| B. E. Henderson Pres. & Dir. | Arthur R. Dana Vice-Pres. & Dir. | Fred Hutteman Treas. & Dir. | Don H. Rose Dir. & Officer | F. L. Thompson Vice-President | Other Directors & Officers |
|-------------------------------------------|---------------------------------|
| 1935 $ 79,118 | $ 33,716 | $30,603 | $ | | $179,637 |
| 1936 122,180 | 45,180 | | 27,200 | 208,970 |
| 1937* 125,250 | 54,212 | 35,038 | 215,908 |
| 1938 125,165 | 54,137 | 35,037 | 215,367 |
| 1939 125,142 | 54,088 | 38,037 | 215,187 |
| 1940 125,165 | 54,129 | 40,000 | 215,480 |
| 1941 125,163 | 54,161 | 40,037 | 215,368 |
| $827,183 | $349,623 | $30,503 | $188,149 | $27,200 | $1,465,917 |

*Salary Contract—$75,000 Bonus 50,000 As General Manager, etc., of Household Finance Corp., and subsidiaries, plus other fees.

The appended table giving compilation of figures taken from Moody's Manual of Investments would seem to indicate that the corporation continues to prosper mightily under the Russell Sage plan. It is to be remembered that the money borrowed by the company at rates ranging from 23 1/4% to 3 1/2% is loaned at rates from 36% to 42%.

Another company which occupies an important position in the Missouri field is the American Investment Company of Illinois, and its subsidiaries. This group is sometimes known as the Barnes-Lichenstein organization. While enjoying the benefit of the Russell Sage Foundation interest rate, its plan of organization is essentially different from the Household Finance Corporation. The American Investment Company of Illinois is a holding company, chartered in 1925 by the State of Delaware, and does the following:

(1) Lends money to the subsidiary corporations which make small personal loans under the Small Loan Acts of the several states.

(2) Charges subsidiary corporations interest and other various costs of financing, as well as certain managerial "supervisory" fees.

(3) Absorbs the net income of the subsidiary corporations, through cash dividends paid to the Delaware corporation known as American Investment Company of Illinois.19

The loan companies or corporations operated by the American Investment Company use the name of Public Loan Corporation. In 1943 there were said to be 16 of these operations in Missouri.

In addition, the controlling interests in the American Investment Company have a corporation known as the Public Operating Corporation. The stock in this corporation was reported to have been wholly owned by three executive officers and directors of the American Investment Company of Illinois. It is paid fees for “supervisory services” and for materials, by all of the operating subsidiaries of the American Investment Company. The fees paid to the Public Operating Corporation are based on the total outstanding notes receivable of each subsidiary corporation.

Cash dividends paid out by the American Investment Company of Illinois in 1935 to 1942 inclusive were as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Net Income Available for Dividends</th>
</tr>
</thead>
<tbody>
<tr>
<td>1935</td>
<td>$117,801.80</td>
</tr>
<tr>
<td>1936</td>
<td>309,430.38</td>
</tr>
<tr>
<td>1937</td>
<td>555,143.60</td>
</tr>
<tr>
<td>1938</td>
<td>703,695.38</td>
</tr>
<tr>
<td>1939</td>
<td>987,215.61</td>
</tr>
<tr>
<td>1940</td>
<td>1,295,834.60</td>
</tr>
<tr>
<td>1941</td>
<td>1,300,077.40</td>
</tr>
</tbody>
</table>

Total $5,269,198.77

1942 $1,044,151.45

Total 1935 to 1942 inclusive $6,313,350.22

The net income available for dividends between 1931 and 1941 inclusive is shown by the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Gross Income</th>
<th>Net Income Available For Dividends</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1931</td>
<td>$665,707</td>
<td>$191,741</td>
<td>28.80***</td>
</tr>
<tr>
<td>1932</td>
<td>639,524</td>
<td>162,029</td>
<td>25.33</td>
</tr>
<tr>
<td>1933</td>
<td>592,351</td>
<td>151,390</td>
<td>25.56</td>
</tr>
<tr>
<td>1934</td>
<td>746,553</td>
<td>186,548</td>
<td>24.99</td>
</tr>
<tr>
<td>1935</td>
<td>932,715</td>
<td>241,368</td>
<td>25.88</td>
</tr>
<tr>
<td>1936</td>
<td>1,301,596</td>
<td>383,101</td>
<td>29.43</td>
</tr>
<tr>
<td>1937</td>
<td>1,826,890</td>
<td>675,059</td>
<td>36.95</td>
</tr>
</tbody>
</table>

20. Coogan Report, supra, n. 4
1938 (2,666,591) 802,705 30.77
1939 (4,003,156) 1,271,177 31.75
1940 (5,117,306) 1,439,256 28.12
1941 Est. (5,737,772) 1,440,000 25.10

*Total Interest Collected from small loan borrowers.
**Total Dollars left for stockholders after all expenses, including taxes, were paid.
***Out of each dollar of interest, collected from small borrowers 28.8 cents were pure profit (gravy) for the owners of the stock. This 28.8 cents pure profit was left out of each dollar collected as interest, after heavy charges for management, salaries, travel, etc.

In 1937 the pure gravy was 36.95 cents out of every dollar collected, as interest, from small borrowers.

The remuneration received by the officers of the American Investment Company between 1935 and 1941 inclusive is as follows:22

<table>
<thead>
<tr>
<th>D.L. Barnes</th>
<th>D.B. Lichenstein</th>
<th>J.L. Denny</th>
<th>N.W. Newmann</th>
<th>N.F. Sallinger</th>
<th>Thompson</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td>Exec. V.-P.</td>
<td>Sec.-Treas.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1935</td>
<td>11,774.29</td>
<td>9,452.93</td>
<td>3,186.80</td>
<td>3,186.80</td>
<td></td>
</tr>
<tr>
<td>1936</td>
<td>30,525.52</td>
<td>23,485.89</td>
<td>7,995.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1937</td>
<td>42,743.55</td>
<td>33,656.58</td>
<td>11,929.42</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1938</td>
<td>47,469.66</td>
<td>37,546.10</td>
<td>*</td>
<td>33,000.00</td>
<td></td>
</tr>
<tr>
<td>1939</td>
<td>60,000.00</td>
<td>48,000.00</td>
<td></td>
<td>20,000.00</td>
<td></td>
</tr>
<tr>
<td>1940</td>
<td>66,000.00</td>
<td>52,800.00</td>
<td></td>
<td>30,000.00</td>
<td></td>
</tr>
<tr>
<td>1941</td>
<td>53,166.62</td>
<td>42,533.31</td>
<td></td>
<td>19,999.97</td>
<td></td>
</tr>
<tr>
<td></td>
<td>311,479.64</td>
<td>247,474.71</td>
<td>23,111.73*</td>
<td>33,000.00</td>
<td>20,000.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>49,999.97</td>
<td></td>
</tr>
</tbody>
</table>

Directors
1939—16 Directors ...........................................................................$172,385.00
1940—18 Directors ...........................................................................201,250.00
1941—18 Directors ...........................................................................178,139.87

These figures do not include the incomes received by officers from cash dividends, personal expense allowances, or incomes from salaried officers’ benefit fund paid by American Investment Company of Illinois.

*Salaries of less than $20,000 were no longer reported, hence they are not shown for 1938-1941.

The above data concerning the American Investment Company and allied operations, is drawn from the material submitted to the Constitutional Convention. The appended table from Moody’s Manual, showing operations of the company from 1945 to 1949 inclusive would seem to indicate

22. Coogan Report, supra, n. 4.
that like the Household Finance Corporation, this company has continued to prosper under the rates charged the necessitous borrowers.

<table>
<thead>
<tr>
<th>Net Operating Income (Before Int. Charges and Taxes)</th>
<th>Interest Charges</th>
<th>Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945...........................................1,838,159</td>
<td>200,759</td>
<td>582,778</td>
</tr>
<tr>
<td>1946........................................2,689,171</td>
<td>291,154</td>
<td>905,419</td>
</tr>
<tr>
<td>1947........................................3,513,461</td>
<td>512,389</td>
<td>1,058,624</td>
</tr>
<tr>
<td>1948........................................5,092,729</td>
<td>807,949</td>
<td>1,660,675</td>
</tr>
<tr>
<td>1949........................................6,799,128</td>
<td>1,147,511</td>
<td>2,025,456</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Capital Stock</th>
<th>Earned Surplus</th>
<th>Paid In Surplus</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945...........6,196,764</td>
<td>1,049,363</td>
<td>2,348,907</td>
</tr>
<tr>
<td>1946...........5,609,443</td>
<td>1,433,716</td>
<td>2,882,092</td>
</tr>
<tr>
<td>1947...........5,612,691</td>
<td>2,296,110</td>
<td>2,923,504</td>
</tr>
<tr>
<td>1948...........4,825,609</td>
<td>3,148,833</td>
<td>4,043,028</td>
</tr>
<tr>
<td>1949...........8,901,706</td>
<td>5,052,176</td>
<td>5,634,446</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bonds</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945...........4,000,000</td>
<td>7,370,000</td>
</tr>
<tr>
<td>1946...........12,500,000</td>
<td>13,315,000</td>
</tr>
<tr>
<td>1947...........12,500,000</td>
<td>17,065,000</td>
</tr>
<tr>
<td>1948...........12,000,000</td>
<td>22,078,000</td>
</tr>
<tr>
<td>1949...........6,250,000</td>
<td>31,067,000</td>
</tr>
</tbody>
</table>

The Commonwealth Loan Company is an Indiana corporation with headquarters in that state. In a prospectus issued in 1940 its balance sheet for the year closing December 31, 1939, showed total assets of $11,878,204.87 capital stock and surplus of $6,731,275.36; and net income of $965,582.38. According to the report of the Finance Commissioner this company maintained eleven offices in the State of Missouri.

In common with the other companies in the small loan field, according to the reports from Moody's Manual of Investments, covering the years 1945 to 1949 inclusive, this company seems to have enjoyed excellent results.
According to the prospectus issued by the Beneficial Industrial Loan Corporation of Delaware, the balance sheet of that company June 30, 1941, shows total capital assets, $85,108,900; with capital stock and surplus of $43,857,675.03; and net income for 1940 of $5,636,151.46. This company operated ten different offices in Missouri under the name of the Personal Finance Company.

Prior to 1945 this company, along with the others, was operating in Missouri. As shown by Moody’s Manual, the experience of the Beneficial Loan Corporation during the last five years is in keeping with that of the other companies.
Among other comparative tables set up in the Coogan report\textsuperscript{23} was one showing the profits of various concerns in the United States over the period from 1936 to 1941, inclusive. The tables involved showed the total invested capital of the companies, the net profits before income tax, the federal income tax, and the net profits after federal income tax, and the profits left for the owners after payment of operating expense, and taxes, based on the percent of total invested capital. These tables are too extensive to set them out as a whole. It is sufficient for the purposes of this paper, to give the final results by way of profits after payment of operating costs and income taxes on the basis of the percentage of the total invested capital.

<table>
<thead>
<tr>
<th></th>
<th>Debentures</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945</td>
<td>16,996,000</td>
<td>16,464,000</td>
</tr>
<tr>
<td>1946</td>
<td>20,000,000</td>
<td>34,181,500</td>
</tr>
<tr>
<td>1947</td>
<td>20,000,000</td>
<td>46,557,000</td>
</tr>
<tr>
<td>1948</td>
<td>20,000,000</td>
<td>49,347,000</td>
</tr>
<tr>
<td>1949</td>
<td>39,600,000</td>
<td>36,675,000</td>
</tr>
</tbody>
</table>

American Listed Corporations
(As compiled by the Securities and Exchange Commission)

<table>
<thead>
<tr>
<th></th>
<th>1936</th>
<th>1937</th>
<th>1938</th>
<th>1939</th>
<th>1940</th>
<th>1941</th>
</tr>
</thead>
<tbody>
<tr>
<td>878 Corporations</td>
<td>8.41%</td>
<td>9.15%</td>
<td>4.04%</td>
<td>6.73%</td>
<td>8.43%</td>
<td>9.91%</td>
</tr>
<tr>
<td>General Motors Corp.</td>
<td>16.2</td>
<td>12.0</td>
<td>9.4</td>
<td>13.1</td>
<td>10.9</td>
<td>8.3</td>
</tr>
<tr>
<td>Chrysler Corporation</td>
<td>9.3</td>
<td>6.6</td>
<td>4.5</td>
<td>6.7</td>
<td>5.2</td>
<td>4.7</td>
</tr>
<tr>
<td>U. S. Steel Corporation</td>
<td>3.03</td>
<td>5.54</td>
<td>.50</td>
<td>*2.68</td>
<td>6.58</td>
<td>7.26</td>
</tr>
<tr>
<td>Household Finance Corp.</td>
<td>16.6</td>
<td>16.5</td>
<td>15.8</td>
<td>14.2</td>
<td>14.9</td>
<td>12.9</td>
</tr>
</tbody>
</table>

Among other things developed in the Constitutional Convention was another contribution made by the Russell Sage Foundation which has been of great assistance to the small loan companies. A glance at the results of the operations of these companies for the last 25 years is sufficient to show the unique earning capacity of these operations. The men who were shrewd enough to put over the Russell Sage program of interest rates in the various state legislatures were also wise enough to understand that unless some cover was found for the earnings of these companies, the rates established could not last long. The conventional method of calculating returns upon investment is to determine the amount of money invested in a particular business and calculate a return thereon. Various types of business have a more or less established ratio of return based upon the relations between the invested capital and earnings.

\textsuperscript{23} Coogan Report, supra, n. 4.
The Russell Sage Foundation developed a method of reporting earnings and expenses of small loan companies on a basis of "average employed assets." This method is not based upon the actual owners' investment, or on net worth. The "average employed assets" is computed by multiplying the average net loan balance (loan balances minus reserve for bad debts) by 0.15. The 0.15 is made up by allowing the following points for indicated items:

- 0.05 points for cash balances.
- 0.02 points for furniture and fixtures.
- 0.02 points for other tangible assets.
- 0.06 points for the cost of development.

The multiplier is supposed to represent conservative estimates of assets other than loans receivable.

The "average employed assets" method conceals the actual return on the investment of owners.

It is also to be remembered that the subsidiaries of the American Investment Company, which were known as the Public Loan Corporation, were so operated that the actual profits from the business would not be disclosed. In a legislative investigation in Missouri, it was testified that these subsidiary corporations paid to the American Investment Company, which is the holding company, 12% interest. As a result, the earnings by the Public Loan Corporations were fairly nominal, whereas the earnings of the holding company, an Illinois corporation, appear in the information above given. All of this is a part and parcel of the methods used to conceal the actual profits realized upon small loans and justifying the continuance of the high rates prevailing under the Russell Sage Act.

Section 44 of Article III was voted on three times during the Convention. The proposal received lengthy consideration on the floor. The parliamentary proceedings embracing consideration of this section consumed substantial time, but each time it was submitted there was an increased majority.

II

Legislation Available under Section 44 of Article III

The immediate effect of Section 44 was to invalidate all special interest rates allowed by statute to classified groups of lenders, and to leave the general contract rate of 8% in effect and available for all loans, including the type formerly made by the special classes of lenders.

(a) The Legislature Has the Right to Provide for Any Interest Rate It Deems Fair and Reasonable

While the effect of Section 44 was to repeal the Special Interest rate statutes, it left the Legislature free to enact new statutes, revising the interest rates so long as those statutes did not offend against the provisions of Section 44 by limiting the availability of the new interest rate to any special group of lenders. The small loan interests had publicly opposed the adoption of the new Constitution on account of the provisions of Section 44. After its adoption, it was not to be expected that these interests would surrender without a struggle.

Notwithstanding the provisions of Section 44 in the new Constitution, the benefit of the provisions of the old Missouri Small Loan Act was sought in a proceedings entitled Household Finance Corporation v. Shaffner.25 Relator, Household Finance Company, brought a mandamus against the Commissioner of Finance to compel the issuance of a loan license under the Missouri Small Loan Act. Relator asserted that Section 44 was unconstitutional because in violation of the "equal protection" cause of the 14th Amendment. The Supreme Court discussed this question at length and rejected the contention, holding that Section 44 in no way violates the 14th Amendment of the Federal Constitution. This would seem to dispose of any question as to the constitutionality of Section 44 under the 14th Amendment.

Relator also contended that only Section 8171 of the Small Loan Act which provided that the Act did not apply to banks, trust companies and pawnbrokers, was in conflict with Section 44 and that the rest of the Act provided for a classification of loans which type of classification was not in conflict with Section 44. Respondent contended that Section 44 prohibited classification of lenders in any way and this included classification of interest

25. 356 Mo. 808, 203 S.W. 2d 734 (1947).
rates by size and type of loan, and that the Small Loan Act provided for classification of lenders and hence was invalid. Judge Clark and Judge Hyde both wrote opinions, two judges concurring in each opinion and one judge concurring in both. Both opinions held that all of the Small Loan Act was invalidated and not merely Section 8171, which provided that the Act only applied to certain types of lenders.

As Judge Clark put it:

"... Undoubtedly the law purports to set up for a favored group or class of licensed lenders higher rates than are available to lenders who cannot or do not procure a license and engage in the small loan business, and this is in conflict with Section 44." 26

And Judge Hyde said:

"I concur in the opinion of CLARK, JR., herein, that the Small Loan Act Sections 8150-8175 violates Section 44 of Article III of the Constitution because it provides for licensing persons to engage in the business of loaning money up to $300 at a greater rate of interest than 8% and prohibits all others from lending any amount at more than 8%." 27

Both opinions recognized that loans may be classified as to amounts or type with different permissible rates of interest for different types of loans, but the rates available for any type must be available to all lenders without regard to classification or type of their business.

(b) The Legislature May Provide for the Policing of Lenders or Loans

The Shaffner case expressly recognized the power of the legislature to enact laws regulating different types of lenders, such as banks, trust companies, savings and loan associations, etc., and to provide for reasonable classification of loans. The concurring opinion of Judge Hyde emphasized that Section 44 does not prohibit all licensing or regulation, nor does it abrogate the police power of the state except to the extent that it prohibits fixing different rates of interest to be charged by different classes of lenders. The old Missouri Small Loan Act was held invalid because only those who procured a license and submitted to certain regulatory devices were permitted to charge the higher rates. The court held that the law purported to set up a favored group or class of license lenders who could charge higher rates than those lenders who did not have a license, since the licensing requirement depended on interest rate charged.

26. Id. at 817, 203 S.W. 2d at 738.
27. Ibid.
In view of this case, can there be any constitutional regulations of loans in Missouri? The answer is a very emphatic 'Yes!' The Shaffner case gives us at least three "aids to vision" as to the type of a law which will not conflict with Section 44. They are: (1) Loans may be classified; (2) the state may still exercise its police power in connection with loans; (3) no classified group of lenders will be permitted to enjoy special interest rates limited to their group. With these in mind, let us examine what type of legislation is permissible. The legislature may classify loans as to size, nature of security, method of repayment, length of loan, or any combination thereof, and have a different rate of interest applicable to each class, but every lender must be allowed to charge these rates.

Under the Shaffner decision a variety of bills can be enacted by the legislature, classifying loans on the basis of methods of repayment, size, the nature of the security, and allow different rates of interest and methods of calculation. These bills might differ substantially as to the classification of loans and the rates of interest allowed on each type of loan or the method of computing interest and penalties for violation of their regulation. Constitutionally speaking, such bills are not objectionable under Section 44. Under such bills every lender would be permitted to charge the higher rates of interest. The method of making these loans would be regulated and penalties provided for non-compliance.

The sole purpose behind the enactment of Section 44 was to permit the borrower to approach and deal with any source from which he might be able to obtain his accommodation.

(c) Current Legislation

The 66th General Assembly recently passed two bills. Senate Bill 79 provided an increase of interest rates on loans up to $400, and regulated the method of making these particular loans. All of which was clearly within the legislative authority. The other Bill provided for the supervision and regulation of making so-called "consumer credit loans." The statute prohibits lenders from engaging in the business of making "consumer credit loans" unless they first obtain a Certificate of Registration from the Commission of Finance and pay an annual fee of $150 for the purpose of defraying the expenses of the Act. There are provisions for supervision and regulation of the registrant. Those not procuring a Certificate of Registration are denied the right of making these loans. The fact that a Certificate of Registration is required instead of a license is immaterial. In effect, it is a
licensing requirement. Mere name calling is not sufficient to change the nature of the requirement. The old Small Loan Act had a like provision, except that the word license was used instead of "Certificate of Registration." Therefore, the validity of this bill must be determined on the theory that it contains a licensing provision.

The requirement that a lender must procure a "Certificate of Registration" is violative of Section 44. This licensing requirement restricts the right to make certain loans to those who have procured the "Certificate of Registration." Such a provision does not make the rate of interest . . . "applicable generally and to all lenders . . ." as is expressly required by Section 44, but it expressly limits the right to make so-called consumer loans to those who have procured a Certificate of Registration. As has already been pointed out in connection with the Shaffner case, licensed and unlicensed lenders are a class within the meaning of Section 44. Apparently the proponents of this measure attempted to circumvent the Constitutional mandate by placing the licensing requirement in a regulatory law. This device in no way improved the situation, because it results in creating a class of lenders.

It would have been a very simple matter to have armed the regulatory law with other enforcement provisions such as criminal penalties, fines, etc., and thus in no way offended against the provisions of Section 44. At the same time these laws were being considered by the General Assembly, the newspaper columns reported that the bankers and small loan interests had joined in a program to procure a law authorizing increased interest rates. A reading of the regulatory law (Senate Bill 78) discloses the basis of the arrangement. The preliminary definitions of the Act contained the following:

"'Person' shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities, excepting those corporations whose powers emanate from the laws of the United States and those which under other law are subject to the supervisory jurisdiction of the Commissioner of Finance of Missouri or of the Savings and Loan Supervisor of Missouri.

"'Lender' shall mean any person engaged in the business of making consumer credit loans. A person who makes an occasional consumer credit loan or who occasionally makes loans but is not regularly engaged in the business of making consumer credit loans shall not be considered a lender subject to this act."28

The enforcement provision reads as follows:

"In the event any lender fails, refuses or neglects to comply

with the provisions of this Act, or of any laws of the State of Missouri relating to consumer credit loans or assignment or sale of wages, or salaries or other compensation, his or its certificate of registration for the place of business at which the violation occurred, may be suspended, or revoked by order of the Commissioner after a hearing before said Commissioner on any order to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the particular lender at least ten days prior to the hearing. Such action shall not affect any rights or charter powers which any state bank, state trust company or national banking association has by virtue of any other law. Review may be had of any such order made and entered by the Commissioner in the manner provided by law."

Under the above provisions, the banking institutions, state and national, and the savings and loan associations, are exempted from the supervisory provisions of this particular Act and the penalties for the breach thereof. They procure the benefit of the additional interest rate without in any way being subject to the regulatory provisions in Senate Bill 78.

The small loan group procured several benefits: (1) Increased interest rates on loans up to $400, which is hedged about with all the formula common to the Russell Sage statutes. Fundamentally, the effect of these provisions is to make the business a highly specialized one and thus promote a monopoly. (2) A supervisory plan under which they can operate and so long as their loans remain below the $400 mark will enable them to return to the old closed door situation destroyed by Section 44. The Act itself provides that no one can engage in the business of making these loans without a "Certificate of Registration" (license). Of course this section at once establishes a class of lenders, the very thing condemned by Section 44. The mere fact that it is done by indirection in no way modifies the result. The whole Registration Section is an obvious effort on the part of the writers of the legislation to circumvent the provisions of Section 44, and any court test of the legislation will undoubtedly result in finding the Act invalid.

The above mentioned legislation is the only legislation on this subject which has been passed and approved since the adoption of Section 44. Numerous bills have been presented, some of them defeated on the floor of one house or the other, some of them vetoed by the Governor. In every instance where the legislation was under consideration, the persistent efforts of the

29. Id. § 10. Italics added.
beneficiaries of the lenders' statutes in Missouri to preserve their special privileges continually asserted themselves. These efforts are evidenced in the registration section above considered. That the framers of the legislation were conscious of the dangers of their proposals is evidenced by the provision in the registration bill defining "lenders," which says, among other things, "A person who makes an occasional consumer credit loan, but is not regularly engaged in the business of making consumer credit loans, shall not be considered a lender subject to this Act." The obvious purpose of this provision is to leave the door open against too stringent an enforcement of the statute. Undoubtedly a stringent enforcement would early result in the assertion of its unconstitutionality under Section 44 and would destroy the Act.

CONCLUSION

It is said that Section 44 of Article III is revolutionary in its character. It is only revolutionary because it runs counter to a groove of thinking which was established by the persistence and industry of the Russell Sage Foundation in establishing the original program and the small loan beneficiaries of that program, who have continued to develop the concept. Certainly there is nothing revolutionary to an American in the concept of competition. All Section 44 undertakes to do is to permit the borrower to have the benefit of every source of capital which is available on the market for lending. To this end, Section 44 abolishes the old classifications in the lender legislation and makes the rates of interest which may be established by the legislature available to all lenders. Viewed from this standpoint, the Section is but a development of the theory of the various anti-trust acts and other laws which have been enacted in this country to protect the public against monopoly. It would certainly appear that the companies whose records we have examined are in a position to compete successfully on the money market, and ought to be willing to loan their money in competition with others engaged in the same business. This truism is recognized by Dr. Upton in his discussion of "The Economics of Fair Charges For Consumer Loans," which appears in this symposium. In the course of his discussion, he says:

"... Granted that the weakness in this regard has always been the ignorance of the borrower, from the cost or general economic standpoint few businesses lend themselves so well to the automatic regulatory aspect of competition. And the defective position of the consumer is just the thing that can most easily be overcome by a
positive educational and institutional program. The substantial improvement over the last thirty years in the willingness of consumers to shop for credit and to appraise alternative credit sources intelligently is strong testimony to what can be accomplished in this regard.

"In the absence of effective competition there is no way of determining a fair charge. The greatest economist would be unable to provide an absolute answer for even an individual case; so it should be clear that a government cannot establish a general statute that will provide equity in all cases. . . "30

Continuing, Dr. Upton says:

"In regulating rates charged for consumer loans, therefore, the legislative body must take into account its ability, willingness, and determination to encourage competition as an automatic determiner of fairness. If competition is to be relied upon and fostered, then all that may be called for is a general increase in the maximum rate allowable and a prohibition of certain malpractices. If the social force of competition is to be ignored, then what must follow is a rather arbitrary stratification of the business in all of its basic operating phases, in which case inequities are not removed, but rather contained in narrow limits."31

As pointed out by this eminent authority, competition should be at the foundation of any small loan program.

The purpose of Section 44 of Article III was to develop a competitive situation in the lender field. From the evidence which has been submitted, every fair-minded person will agree that it would appear from the earnings made by the small loan group the rates which are now authorized in many states on loans of this kind are excessive and could be reduced. Competition must inevitably be one factor in procuring this much-to-be-desired result.

30. Supra, p. 289.
31. Ibid.