OPINION 65-83

Syllabus:

The reference to municipal corporations in Sections 1321.03 and 1321.06, Revised Code, does not restrict the situs of a small loans business to an incorporated city or village but includes any location in any political subdivision in which such business is proposed to be conducted, provided that the division of securities otherwise determines that the requirements of Section 1321.04, Revised Code, are satisfied with respect to the applicant.

To: Ralph A. Winter, Superintendent of Securities and Small Loans, Department of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, May 17, 1965

You have requested my opinion as to whether the provisions of Chapter 1321, Revised Code, relating to small loan licenses restrict the location of such a business within the confines of a municipal corporation as contrasted with a township.

To answer this inquiry it is necessary to consider in pertinent part the following provisions of the small loan act, Chapter 1321, supra:

Section 1321.03, Revised Code;

"Application for a license shall be in writing, under oath, and in the form prescribed by the division of securities, and shall contain the name, residence, and business address of the applicant, and, if the applicant is a partnership or association, of every member thereof, and, if a corporation, of each officer and director thereof; also the county and municipal corporation with street and number where the business is to be conducted and such further relevant information as the division requires* * *"
(Emphasis added)

Section 1321.04, Revised Code;

"Upon the filing of an application under section 1321.03 of the Revised Code, payment of the fees, and the execution and filing of the bond, the division of securities shall investigate the facts concerning the applicant and the requirements provided for in divisions (A), (B), and (C) of this section. Each applicant for an original license shall publish a notice of the filing of such application once, in form prescribed by the division, in a daily newspaper of general circulation, in the community where the applicant's licensed place of business, as set forth in said application, is to be located; * * *

"The division shall approve such application and issue and deliver a license to the applicant if the division finds;

"(A) That the financial responsibility, experience, reputation, and general fitness of the applicant and of the members thereof, if the applicant is a partnership or an association, and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant the belief that the business will be operated lawfully, honestly, and fairly under sections 1321.01 to 1321.19, inclusive, of the Revised Code, and within the purposes of such sections, that the applicant has fully complied with such sections, and that such applicant is qualified to act as a licensed lender;

"(B) That allowing such applicant to engage in such business will promote the con-

venience and advantage of the community in which the licensed office is to be located;

"(C) That the applicant has available for the operation of such business at the specified location net assets of not less than ten thousand dollars."
(Emphasis added)

Section 1321.06, Revised Code;

"No change in the place of business of a licensee to a location outside the original municipal corporation shall be permitted under the same license. When a licensee wishes to change his place of business within the same municipal corporation, he shall give written notice thereof in advance to the division which shall provide a license for the new address, without cost.

"Sections 1321.01 to 1321.19, inclusive, of the Revised Code, do not limit the loans of any licensee to residents of the community in which the licensed place of business is situated."
(Emphasis added)

The use of the term "municipal corporation" in Sections 1321.03 and 1321.06, supra, raises the question of whether such reference was intended to impose a geographical restriction with regards to the situs of the licensed business and thereby limit the location of the licensee within the boundaries of an incorporated area. It is therefore necessary that we consider this language more closely.

These two sections have not been amended since they were originally enacted in 1943, 120 Ohio Laws 75, in pertinent part as follows:

Section 1321.03, supra, (Section 8624-52 General Code)

"* * *, also the county and municipality with street and number, if any, where the business is to be conducted* * *"

Section 1321.06, supra, (Section 8624-55 General Code)

"(b) No change in the place of business of a licensee to a location outside the original municipality, city or village shall be permitted under the same license." (Emphasis added)

During the recodification of Ohio statutes in 1953, the above underlined language was deleted and the term "municipal corporation" was substituted. The redrafting however was not intended to effect any substantive change in the law. Section 1.24, Revised Code. Although the terms "municipality" and "municipal corporation" have been used

interchangeably in the Ohio Constitution, Article XVIII, and in Ohio statutes to refer to an incorporated political subdivision, such terms are not necessarily synonymous.

It is recognized that in its technical and historical sense a "municipality" includes only those political subdivisions in which the inhabitants through their voluntary agreement confer upon themselves by incorporation certain powers for purposes of carrying out local self government. In Ohio, such incorporated areas are classified either as cities or villages depending upon population. Section 703.01, Revised Code. On the other hand, a township is an involuntary political subdivision created by law and the inhabitants therein possess only such powers for the administration of government as conferred upon them by law. A township, therefore, is only a quasi-corporation and does not have the powers and attributes of a true "municipality."

This does not mean, however, that such technical definitions are necessarily exclusive. In common parlance the term "municipality" has been given a broader application to include all political subdivisions such as a township. Hanslovsky v. Township of Leland, 281 Mich., 652, 275 N.W. 720; Spalding Lumber Co. v. Brown, 171 Ill., 487, 49 N.E. 725; Siler v. Industrial Accident Commission, 150 Cal. App., 2d 157, 309 P. 2d 910. In the case of Hanson v. City of Cresco, 132 Iowa, 533, 109 N.W., 1109, the Court stated the following on pages 1112 and 1113:

> "It is apparent, therefore, that in determining the meaning to be given to the word 'municipality' as used in the statute for the purpose of applying it to this case, we need not be limited to its historical meaning, but may take into account the intention of the Legislature for the purpose of ascertaining whether it was used to include townships."

It is necessary therefore that we consider the purpose served by the small loans act and in particular the intention of the legislature in enacting the language herein questioned. For this purpose, I feel it will be helpful to look briefly at the historical development of our small loans act.

As early as 1911, Ohio had enacted laws to regulate the loaning of money upon chattels or personal property. 102 Ohio Laws 469. Prior to 1943, none of the laws enacted or amended for the licensing and regulation of persons engaged in the loaning of money at a rate of interest in excess of eight per cent per annum vested the regulatory agency with any discretion in the issuance of licenses. The agency was required to grant a license upon the filing of an application containing the address of the business and other information and the filing of a bond and required fee.

About the time Ohio was enacting its first laws regulating loaning practices, the prevalence of loan shark practices in the small loan business was drawing national attention. The Russell Sage Foundation undertook consideration of the growing problems in this business and the need for regulation. The studies resulted in the drafting of the first uniform small

loan act in 1916. F. B. Hubachek, Annotations on Small Loan Laws, page 181. The basic purpose for such laws was expressed in Family Finance Corp. v. Gaffney, 11 N.J. 565, 95 A. 2d 407, 410, in which the Court made the following observations:

> "* * *The small loan business is a social and economic necessity responsive to the needs of borrowers, usually wage earners, who have no banking credit and require small loans for emergency needs. Such legislation was made necessary by the urgent need to protect such borrowers against oppressive practices of loan sharks who prey upon their critical circumstances to exact exorbitant rates of interest."

It is interesting to note that in the first draft of the uniform act the application for a license was to provide "the county and municipality with street and number, if any, where the business is to be conducted." This language remained unchanged throughout the seven subsequent redrafts of the act. In 1943, the Ohio legislature adopted in substantial part the seventh draft of the uniform act and thereby accepted the language of the uniform act in enacting Sections 8624-52 and 8624-55, General Code, as herein indicated.

It is of further interest that the first drafts of the uniform act vested no discretion in the regulatory agency granting licenses once the applicant complied with the prerequisite requirements of filing an application, bond, and fee. It is quite apparent therefore that under both the early Ohio law and the uniform act as drafted that the location of the applicant had no significance other than establishing the place of business and thereby enabling proper inspection and regulatory control. The location of the licensee was not a factor under the laws as originally enacted and drafted which were primarily designed to reduce loan shark practices by regulating interest rates. The emphasis of regulation later changed as stated in Hubachek, "Development of Regulatory Small Loan Laws," 8 Law & Contemp. Prob., 108, 122:

> "By 1931, it had become apparent that increased regulation of the licensed lending business was required. This was provided in the Fifth Draft which contained sweeping innovations. The higher interest privilege became more incidental and the general import of the act was changed to a code of business regulation.
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> "Discretionary authority was invested in the supervising official to grant and revoke licenses, and standards were set up which involved not only the fitness of the applicant but also the convenience and advantage of the community.
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> "In order that the number and caliber of the licenses might be subject to readjustment with changes in the community or in the licensees' activities, power was conferred

upon the supervising official to revoke licenses if facts or conditions existed which originally would have justified denial of the application for license* * *

"In addition, licensees were required to invest a substantial stake in the business. This tended to insure a sense of responsibility and to confine the business to units of sufficient size to promote efficient operation with resulting low rates of charge* * *"

By 1943, it became evident in Ohio that the supervising officials did not have sufficient discretionary power and too many lenders were engaged in this business. Hubachek, "Development of Regulatory Small Loan Laws," supra, page 124. The need in Ohio for additional business regulation as contained in the later drafts of the uniform small loans act was recognized and the seventh draft of the act was adopted in substantial part. The purpose for the fact finding authority given to the administrative agency under the uniform act to effect greater business regulation was also discussed in Family Finance Corp. v. Gaffney, supra, pages 410 and 411:

"* * *However, while the objective of eliminating the loan shark was thereby largely achieved, it was shortly discovered that emphasis upon the character and fitness of the lender was not enough; that the expansion of the regulated business due to the attractiveness of the return, brought on other undesirable consequences. 'A time came when there were too many licensed lenders and too many dollars seeking to be lent. Competition * * *took the form of excessive solicitation and overlending. This in turn lead to the borrower's delinquency which fostered collection abuses.'* * *This demonstration that public interest was not well served prompted the Russell Sage Foundation to include the convenience and advantage clause in its fifth draft of the uniform law as an additional requirement to the requirements of character and fitness of the applicant.

"'* * *The legislative desideratum was not the mere restriction of the number of licenses, but rather the accomplishement of the well known objectives for which the act was passed* * *' Kelleher v. Ninshull, 11 Wash. 2d. 380, 119 P 2d 302, 309* * *"

Under the Ohio law, the bases upon which the division of securities shall approve or disapprove an application for a small loans license are clearly set forth in Section 1321.04 (A), (B) and (C), supra. Subdivision (A), supra, in addition to the criteria of character and fitness requires that the applicant has fully complied with the other sections of the law which would include the filing of an application designating the place of business. It has been seen however that

the requirement in the law of an application and information contained therein had no other purpose than to provide the regulatory agency with information necessary to control and inspect the licensee. In view of the purposes and history of the small loan laws as herein discussed, the location of the lender is important only insofar as it provides the basis upon which the division may determine whether the licensee will serve the "convenience and advantage of the community."

The courts in defining "community" under similar statutes for the regulation of financial institutions have held that it imparts no concept of fixed geographical boundaries. Upper Darby National Bank v. Myers, 383, Pa., 253, 118 A. 2d, 561. The area included within a "community" under the convenience and advantage clause of the small loans act was passed upon in the case of Household Finance Corp. v. Gaffney, 20 N.J. Super 394, 90 A. 2d, 85. This was an appeal from the action of the licensing agency in disapproving an application for a small loans license under laws nearly identical to those of Ohio. The following paragraph is cited from the syllabus of the case:

> "Municipal boundaries are not determinative as to what constitutes a 'community' within purview of Small Loan Law requirement that granting of license promote convenience and advantage of 'community' and what the precise geographical area should be is question of fact to be resolved in proceedings on application for license to engage in small loan business."

Certainly if the term "community" has no fixed geographical boundaries, it would be a most inconsistent application of the law to conclude that the reference to "municipal corporation" in Section 1321.03, supra, was intended to restrict the business location of the applicant. Although the location of a licensee is normally within a city or village, it was not the intent of the drafters of the uniform act nor the apparent intent of the Ohio legislature to restrict the business address in a "municipality" to an address only within an incorporated subdivision. Thus, upon receipt of an application for a small loans license, the division of securities must proceed to the investigation and factual determinations required by Section 1321.04, supra, having regard to the proposed situs only insofar as it relates to the promotion of the convenience and advantage of the community to be served by the proposed licensee.

It is therefore my opinion and you are hereby advised that the reference to municipal corporations in Sections 1321.03 and 1321.06, Revised Code, does not restrict the situs of a small loans business to an incorporated city or village but includes any location in any political subdivision in which such business is proposed to be conducted, provided that the division of securities otherwise determines that the requirements of Section 1321.04, Revised Code, are satisfied with respect to the applicant.