



EDITORIALS

In Our Opinion

Let's hope sharks' days are numbered

The Arkansas Supreme Court Wednesday gave us fresh occasion to ruminate on how slowly justice grinds when the justices declined once again to say whether the payday lenders who violate the state's lending law are violating the state's lending law. We trust that in the end it will grind well.

How we miss the late Justice George Rose Smith, the finest jurist ever to grace the Supreme Court of Arkansas. For 38 years, every time a money lender came up with a new scheme to avoid the pristinely simple usury provision in the state Constitution, Justice Smith persuaded the justices to strike it down. It was not that he thought the 10-percent usury ceiling was wise. It was simply the law and was to be observed sternly as long as the people kept it enshrined in the Constitution.

Whatever fee that a thrift, bank or merchant came up with, Justice Smith called it what it was — interest by another name.

Justice Smith retired 18 years ago and then came the payday lenders, who by various schemes charge interest rates for short-term loans that are many times the maximum allowed by law. Typically, a customer writes a check to the lender, who gives the customer cash and agrees not to cash the customer's check for a specified period, usually the customer's next payday. The clients are mostly poor and desperate.

The legislature passed a law saying

that the sharking was legal because the fees charged were not to be construed as interest. The legislation empowered the state Board of Collection Agencies to regulate the lenders.

A lawsuit against the Board of Collection Agencies alleging illegal exaction and seeking to have the payday lenders' operation declared unconstitutional was thrown out by Pulaski Circuit Judge Barry Sims on no less than five technical grounds.

The good news is that the Supreme Court reversed the judge on every count and sent the case back to him to try it on its merits. On the critical point, whether the legislative act and the payday lenders' loans were unconstitutional, Judge Sims eerily held: "It's not my place to declare something unconstitutional."

The Supreme Court told him, as any first-year law student might have, that he could, indeed, hold something unconstitutional. That is what judges do.

But the Supreme Court decided that it could not itself rule on the constitutional question until Judge Sims did and the case came back for it to review.

So the lenders will have a reprieve, another year or more to write their depredations in the short and simple annals of the poor.

The state's usury law has been changed since Justice Smith wrote his declarations but the precedent he established is immutable.