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THE ARKANSAS LEADER

WEDNESDAY, APRIL 23, 2008

EDITORIAL >>The court roars again

Nine years is a long time to leave lawlessness unrestrained, but when the river of justice begins to flow, it leaves no flotsam.

The Arkansas Supreme Court last week delivered its third decision in three months holding payday lenders responsible for their illegal activities. It was severe.

The court upheld a \$1.4 million fine against the owner of 14 payday lending outlets in Arkansas. Dennis Bailey had run the cash stores, including stores at Cabot and Beebe, without even obtaining a license from the state Board of Collection Agencies, which is supposed to regulate the lenders and, in this case, actually did.

Previously, in January and March, the court had held in

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separate cases that two cash-advance companies had violated the state Constitution's prohibition against usury even though they were in substantial compliance with the statute enacted by the legislature in 1999 that authorized payday lenders. The court still has not struck down the statute, but it is almost certain to do so later this year when the court hears an appeal of a trial- court decision that raises the question directly.

The Board of Collection Agencies had generally smiled upon the labors of the payday lenders, who charge interest rates of more than 300 percent (the Constitution says 17 percent is the most that can be charged), but it ordered Bailey to close all his businesses in 2005 because he did not have a state license. His business had a license from the state of Missouri and he claimed that the transactions were with the Missouri operation. He continued to make loans, so the board finally fined him \$1.3 million plus costs. Bailey asked the Supreme Court to kick the case back to the agency because its punishment was based on hearsay, not sworn testimony at his hearing.

Hearsay is fine in administrative hearings and the lender did not raise the issue with the board anyway, the Supreme Court said. Close up and pay, it ordered.

When the Supreme Court is finally done with this travesty, the legislature should do some sober reflection. Lawmakers need to answer this question: When the Constitution is crystal clear about what the limits of lending are and when the state's highest court rules

repeatedly for half a century that it means exactly what it says, how can an overwhelming majority of the legislature and a governor (Mike Huckabee) enact a statute that says almost the mirror opposite? Tens of thousands of illegal exactions later we do not know the answer.

POSTED BY THE LEADER AT 6:55 PM 

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