



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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October 1, 1981 No. 81-23

Mr. J. Scott Sheehan
Butler, Binion, Rice, Cook & Knapp
Esperson Buildings
Houston, Texas 77002

Dear Mr. Sheehan:

This is to acknowledge receipt of your letter dated July 28, 1981, in which you ask whether business/commercial purpose loans may be made pursuant to the provisions of Chapter 4, Article 5069, V.T.C.S., and if so, whether the interest rates authorized by Art. 1.04, Article 5069, may be charged on such loans.

Since its enactment in 1967, Chapter 4 has never contained any language which placed limitations upon the purposes for which loans could be made pursuant to its provisions. Accordingly, it has always been the position of this Office that business and commercial loans could be made pursuant to Chapter 4. The recent 67th Legislature did not amend the language of Chapter 4 so as to place any restrictions on the purposes for which a Chapter 4 loan could be made. H.B. 1228 did add Sec. 4.01(8) to Chapter 4 which provides that as an alternative to the rates provided in Art. 4.01, the parties may agree to the interest rates authorized by Art. 1.04.

H.B. 1228 also added Art. 1.04(n)(1) which provides as follows:

"Any loan made under authority of this Article that is extended either primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, or primarily for the purchase of a motor vehicle, and that is payable in two or more installments, not secured by a lien on real estate, and that is entered by a person engaged in the business of making or negotiating those types of loans, is subject to Chapter 4 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title."

As can be seen from the language of Art. 1.04(n)(1), loans for personal, family or household use and loans made for the purchase of automobiles which are made under the authority of Art. 1.04 and which otherwise meet the criteria set out in that Article are required to be subject to the provisions of Chapter 4. It is equally apparent

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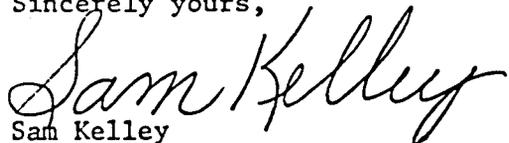
that loans made for business or commercial purposes are not required to be subject to Chapter 4. The more difficult question is whether business and commercial loans made under the authority of Art. 1.04 and which otherwise meet the criteria set out in Art. 1.04(n)(1) may be made pursuant to Chapter 4 on an optional basis.

As previously stated, the provisions of Chapter 4 both before and after enactment of H.B. 1228 allow business and commercial loans to be made subject thereto. Art. 4.01(8) provides that the interest rates authorized by Art. 1.04 may be charged on such loans. It seems clear that since Chapter 4 was not amended so as to limit its provisions to loans for personal, family, or household use that business loans may still be made pursuant to Chapter 4 if the "old" 4.01(1) rate (\$8 add on) is charged. It also seems clear that Art. 4.01(8) was intended to allow Art. 1.04 rates to be charged as alternative rates on all loans (including business loans) which were required to be or which could be subject to Chapter 4.

I am of the opinion that Art. 1.04(n)(1) which requires the loans described therein that are made for personal, family, or household use to be subject to Chapter 4 does not preclude business and commercial loans from being made pursuant to Chapter 4 on an optional basis. I am of the opinion that the language of Art. 1.04(n)(1) provides that business and commercial loans of the type described therein are not required to be subject to Chapter 4 as are loans for personal, family, or household use but that said Article does not preclude business and commercial loans from being made pursuant to Chapter 4. It would seem inconsistent to say that business and commercial loans may still be made pursuant to Chapter 4 so long as the interest charge is \$8 add on but that they may not be if Art. 1.04 rates are charged, particularly in view of the fact that Art. 4.01(8) expressly authorizes Art. 1.04 rates to be charged on Chapter 4 loans, and there is nothing in Chapter 4 limiting the purposes for which loans subject thereto may be made.

It is the position of this Office, therefore, that the provisions of Art. 1.04(n)(1) and Chapter 4 do not preclude business and commercial loans being made pursuant to Chapter 4. Any such loans should meet the requirements of that Chapter and all provisions of the Chapter should be complied with.

Sincerely yours,


Sam Kelley
Consumer Credit Commissioner