



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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November 27, 1984 84-11

Mr. James H. Wallenstein
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Dear Mr. Wallenstein:

In Letter Interpretation No. 81-27, dated November 19, 1981, we responded to several inquiries by you in connection with Article 5069, V.T.C.S. as then recently amended by House Bill 1228. On page 6 of that Letter Interpretation was stated that it was the opinion of this office "that no section of H.B. 1228 was intended to change existing concepts of the 'spreading' of interest..." The letter then contained a brief discussion of concerns we had at that time with regard to those "spreading" concepts.

Subsequent to the issuance of the above mentioned Letter Interpretation, on June 28, 1983 we caused to be published in the Texas Register, Volume 8, Number 46, page 2298 a series of interpretations made by this office as contemplated by Article 5069 - 1.04(p) and 8.01(f), V.T.C.S. On page 2300 of the above mentioned issue of the Texas Register, in Interpretation Number 59, we set out the views of this office on "spreading" of interest originally discussed in Letter Interpretation No. 81-27. Interpretation Number 59 is as follows:

"With regard to the spreading of interest, insofar as loans are concerned, the case of Nevels v Harris, 102 SW2d 1046 (Supreme Court, Texas, 1937) states the position of the Office of the Consumer Credit Commissioner. The case of Tanner Development Company v Ferguson, 561 SW2d 777 (Supreme Court, Texas, 1977) will be the applicable spreading concept in transactions involving the credit sales of real estate. (Letter Interpretation 81-27, November 19, 1981)."



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You have recently questioned whether the discussion in Letter Interpretation No. 81-27 or any informal commentary attributable to this office should be interpreted as constituting our opinion that Texas law in general, or Section 1.04(f) of Article 5069 in particular, precludes "spreading" of interest.

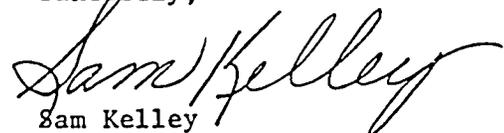
The concept of "spreading" has been the subject of specific legislation (e.g. Article 5069 - 1.07(a), V.T.C.S.) and extensive judicial analysis, including the two Texas Supreme Court cases cited on page 6 of the November 19, 1981 Letter Interpretation (Nevels v Harris, 102 SW2d 1046 (1937) and Tanner Development Co. v Ferguson, 561 SW2d 1046 (1977)). We do not believe that the Legislature in adopting House Bill 1228 intended to supersede the above mentioned authorities. House Bill 1228 made several changes in various other sections of the then existing Article 1.07 but made no changes in Article 1.07(a). On several occasions this writer has reviewed the complete transcript of the legislative proceedings concerning House Bill 1228 and found nothing in that record to indicate any legislative intent to effect any change in the law relating to "spreading." We do not consider it the function of this office to attempt by interpretation or otherwise to change or supersede existing authorities and we do not intend to do so.

Although the second sentence of Section 1.04(f) of Article 5069 provides that "the rate or amount so produced may not exceed the ceiling that may from time to time be in effect and applicable to the contract," the sentence concludes with the words "for so long as debt is outstanding under the contract." This concluding language is very similar to language used by the Texas Supreme Court in Mills v Johnston, 23 Tex. 308 (1859) (as quoted and emphasized in footnote 9 of Tanner Development Co. v Ferguson, supra), and Nevels v Harris, supra, wherein the Texas Supreme Court said that usury is to be judged over the entire period that the borrower has the use of the money, not merely during a particular segment of that time.

To remove any question which you or others may have, we hereby restate the operative portion of Letter Interpretation No. 81-27 with regard to "spreading" to provide as follows:

"It is our opinion that no section of H.B. 1228 was intended to change existing concepts of the "spreading" of interest, regardless of whether the loan is a fixed-rate loan or a variable-rate loan."

Sincerely,


Sam Kelley
Consumer Credit Commissioner

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