



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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December 30, 1985 85-18

Mr. Hennon Gilbert
Gilcom Corporation
10715 Gulfdale
San Antonio, Texas 78216

Dear Mr. Gilbert:

This is to acknowledge receipt of your letter dated December 9, 1985 concerning loans made pursuant to Article 5069 - Chapter 5 prior to that chapter's amendment during the 1985 Texas Legislative session by Senate Bill 1152, which became effective August 26, 1985.

From the time of its enactment in 1967 until the above mentioned amendment in 1985, there was never a provision in Chapter 5 which authorized loans other than those which were repayable in consecutive monthly installments. Although other chapters of Article 5069 provided for contracts in which the first repayment period could be a period of time other than one month from the date of the contract, Chapter 5 (prior to Senate Bill 1152) had no such provision. Therefore, prior to August 26, 1985, it was the position of this office that since there was no authorization in Chapter 5 for an extended first payment period loan (for example, a first payment period of one month plus fifteen days) that if such a loan were made, there should be no interest charged for the additional days in excess of one month in the first payment period. (It should be noted that as of August 26, 1985, there is authorization in Chapter 5 for irregular repayment transactions.)

In your letter you set out an example of a Chapter 5 loan made prior to August 26, 1985, which loan was made with an irregular first payment period, and ask whether in our opinion such loan would be usurious and thus subject to the penalties of Chapter 8 of Article 5069 for the charging of excessive interest. For the purposes of this response it is assumed that the example loan was made at a time when the applicable usury ceiling was 18% per annum.



