



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

AL ENDSLEY, Commissioner

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Writer's Direct Number:

February 13, 1987 87-1

Mr. Timothy E. Powers
Haynes and Boone
3100 Interfirst Plaza
901 Main Street
Dallas, Texas 75202

Dear Mr. Powers:

In your letter of February 12, 1987 you indicate that you serve as Texas counsel to a federally-insured state chartered bank located in Delaware (the "Delaware Bank") which has purchased the cardholder contracts evidencing the credit card receivables portfolio (the "Texas Contracts") from a national bank located in Texas. The Texas Contracts are governed by Texas law and provide that the finance charge on each of the Texas Contracts will never exceed an annual percentage rate of 22% and will never be less than an annual percentage rate of 14%.

The Delaware Bank has notified each of the Cardholders of its acquisition of the Texas Contracts, and advised the Cardholders that the Texas Contracts were being replaced by new Cardholder Agreements which are governed by Delaware law and provide that the finance charge applicable to the accounts will be equal to an annual percentage rate of 19.8% (the "Delaware Rate"). The Cardholders were further notified that should the Cardholder not desire to continue the credit card relationship under the new terms it could terminate the relationship by not using the credit card after a certain specified date and any outstanding balance could be paid off under the terms of the Texas Contracts. If the Cardholder continued using the credit card after such date, then both existing and new balances were subject to the Delaware Rate.

You have inquired whether the Delaware Bank must comply with the notice requirements of Tex. Rev. Civ. Stat. Article 5069-1.04(i) prior to charging the Cardholders the Delaware Rate.

The provisions of 12 U.S.C. 1831d(a) allow a state-chartered federally insured bank to charge the rate allowed by the laws of the state, territory or district where the bank is located. Under this authority and that of Marquette National Bank of Minneapolis v. First of Omaha Service Corp., 439

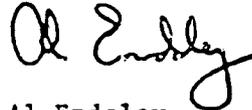
Mr. Timothy Powers
Page Two

February 12, 1987
87-1

U.S. 299 (1978), Letter Interpretation 85-4 provided that an out of state, federally-insured state bank may extend credit to residents of Texas and not be subject to Texas law limiting the rate of interest or finance charge.

If the Cardholder, by continuing to use the credit card after notice that continued use of the card would ratify the Delaware contract, is obligated by Delaware law to the terms of the Delaware contract then I am of the opinion that there would be no necessity under Texas law to give the Art. 1.04(i) notice.

Sincerely,



Al Endsley
Commissioner