



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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July 17, 1981 No. 81-10

Ms. Karen Hutchinson
McDonald, Sanders, Ginsburg, Phillips,
Maddox & Newkirk
Continental National Bank Building
Fort Worth, Texas 76102

Re: Request for Interpretation of
Interest Rates on Open Accounts

Dear Ms. Hutchinson:

This is to acknowledge receipt of your letter dated May 15, 1981. I apologize for the delay in this response, but your letter was one of many inquiries we have received concerning "open-end accounts" and I wanted to give consideration to the many various credit arrangements proposed which may or may not fall within this definition.

You request our opinion as to whether a particular credit program contemplated by one of your clients would be classified as an "open-end account" as that term is defined in Article 1.01(f), Article 5069, V.T.C.S. You further inquire whether your client could charge interest at the rate of 18% per annum on balances 30 days past due which had been incurred pursuant to the plan.

I will paraphrase a description of your client's contemplated plan.

A business entity (individual, corporate or otherwise) sells goods to the public. The business normally receives purchase orders from its customers, delivers the purchased goods, and then bills the customers for the delivered goods on a monthly basis. The business would enter into separate written agreements with each customer wherein the customers would agree to pay interest at the rate of 18% per annum on account balances which were 30 days past due.

Ms. Karen Hutchinson
Page 2

July 17, 1981

The definition of "open-end account" is now found in Article 1.01(f), Article 5069 and provides as follows:

"(f) 'Open-end Account' means any account, under a written contract under which the creditor may permit the obligor to make purchases or borrow money from time to time, and under which interest or time price differential may from time to time be computed on an outstanding unpaid balance. The term includes, but is not limited to, accounts under agreements described by Section (4), Article 3.15; Section (4), Article 4.01; and Chapters 6 and 15 of this Title."

It is our opinion that the contemplated agreement outlined in your letter falls within the definition set out above. It is "open-end," it is in writing, purchases will be made from time to time pursuant to its terms, and the parties contemplate that it will remain in existence for an indefinite period in the future. (This last criteria is of course not in the statutory definition but I believe it to be a consideration in determining how the parties themselves view the agreement.)

In our opinion the plan meets the definition of "open-end account," and an interest rate of 18% could be charged on past due accounts whether 30 days or otherwise (Article 1.04(a)(1) and 1.04(b)(1)).

I hope this reply is satisfactory for your purposes.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner