



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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July 31, 1981 No. 81-13

Mr. P. Keith O'Gorman
Attorney at Law
500 First Federal Building
1100 N.E. Loop 410
San Antonio, Texas 78209

Dear Mr. O'Gorman:

This is to acknowledge receipt of your letter dated May 22, 1981 in which you request an interpretation of this Office concerning the effect of recently enacted H.B. 1228, now a part of Article 5069, V.T.C.S., on home solicitation sales subject to Chapter 13, Article 5069, V.T.C.S.

Article 5069-1.04(q) now provides as follows:

"The maximum rates authorized by this Article do not apply to agreements under which credit is extended for a home solicitation transaction as defined in Chapter 13 of this Title if the agreement is secured by a lien on the obligor's homestead and the credit is extended by the seller or its owner, subsidiary, or corporate affiliate."

Article 5069-13.01(5)(A) defines "Home solicitation transaction" as follows:

"(5) 'Home solicitation transaction' means a consumer transaction:
(A) for the purchase of goods, other than farm equipment, and insurance sales regulated by the State Board of Insurance, or services, payable in installments or in cash where the consideration exceeds \$25, in which the merchant or person acting for him engages in a personal solicitation of the sale to the consumer at a residence and the consumer's agreement or offer to purchase is given at the residence to the merchant or person acting for him, but it does not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or . . ."

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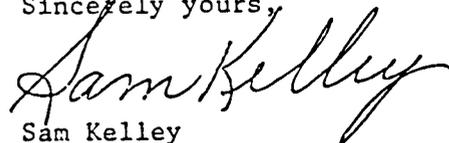
In your letter, you ask whether in our opinion the provisions of Article 1.04(q) would be applicable to the following hypothetical situation:

"A, a building contractor, solicits the construction of a home improvement to the home of B, a consumer. The solicitation occurs at the home of the consumer. If the consumer indicates the desire to participate in the transaction by the purchase of the goods or services, A transports or meets the consumer at the business location of A for the signing of any agreements. The consumer is not obligated in any way to the execution of the agreements until he has physically gone to A's business location for the signing of the contract."

There is general agreement that the purpose of Article 1.04(q), which was added to H.B. 1228 by floor amendment, was to preclude the interest rates authorized by Article 1.04 from being applicable to home solicitation transactions as defined in Chapter 13. One of the portions of that definition as set out above is that ". . . the consumer's agreement or offer to purchase is given at the residence to the merchant or person acting for him . . ." I have never been sure of the correct meaning of the above underlined words "offer to purchase." For the purpose of formulating our position on the applicability of Article 1.04(q) to home solicitation transactions, we feel that the words "offer to purchase" mean something which legally obligates the consumer to complete the transaction. It may be a document which was not completed by both parties, but if the consumer becomes bound to consummate his/her portion of the agreement thereby, the transaction falls within the scope of Chapter 13, and thus Article 1.04(q) is applicable, and Article 1.04 interest rates may not be charged in connection therewith.

It appears that in your hypothetical example the consumer would not become obligated upon a contract at his/her residence, and this being the case, it would be the position of this Office that Article 1.04(q) would not be applicable to the transaction.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner