



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

POST OFFICE BOX 2107
AUSTIN, TEXAS 78768

1011 SAN JACINTO BOULEVARD
512/475-2111

August 19, 1981 No. 81-14

Mr. Kelly Wright
Pruitt, Friberg & Wright
P. O. Box 2017
Vernon, Texas 76384

Dear Mr. Wright:

This is to acknowledge receipt of your letter dated June 15, 1981 concerning recently enacted H.B. 1228.

The facts outlined in your letter indicate that for a number of years one of your clients, a business entity, has had a policy of making loans to its employees and charging a rate of interest never in excess of 10% per annum. This practice was of course authorized by Article 1.04, Article 5069, V.T.C.S., prior to its amendment by H.B. 1228 by the Regular Session of the 67th Legislature, which bill became effective May 8, 1981. Your inquiry is whether H.B. 1228 so amended the existing Article 1.04 so as to now require that any person engaged in the above-described lending practice but not charging interest in excess of 10% per annum must obtain a license in accordance with the provisions of Chapter 3, Article 5069. In the past our position has been that no license was required to make loans at 10% interest or less per annum.

The present Article 1.04(a) as enacted by H.B. 1228 provides that the parties to a written contract may agree to interest charges as authorized by Article 1.04. However, Article 1.04(n)(1) provides as follows:

"Any loan made under authority of this Article that is extended either primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, or primarily for the purchase of a motor vehicle, and that is payable in two or more installments, not secured by a lien on real estate, and that is entered by a person engaged in the business of making or negotiating those types of loans, is subject to Chapter 4 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title."

Mr. Kelly Wright
Page 2

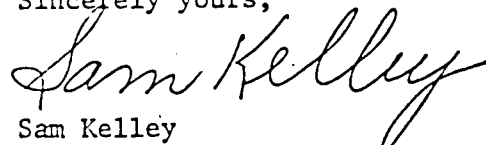
August 19, 1981

As can be seen from this section, any person or business who/which is engaged in the business of making loans under the authority of Article 1.04 and which loans meet the criteria of Article 1.04(n)(1) must obtain a license pursuant to Chapter 3, Article 5069. I realize that it may be contended that Article 1.04(n)(1) requires that anyone who is engaged in the business of making loans must obtain a license, even though such lender is charging interest of 10% per annum or less. I think, however, that consideration should be given the fact that Article 1.04(n)(1) is applicable only if the lender is making loans under the authority of Article 1.04.

Article 16, Section 11 of the Texas Constitution provides that unless the Legislature provides otherwise all contracts for interest in excess of 10% per annum are usurious. Article 1.02, Article 5069, V.T.C.S., likewise, provides that the maximum rate of interest shall be 10% per annum unless otherwise provided by law. I am of the opinion that these two provisions authorize persons to make loans at 10% per annum or less without having to obtain a license. Such loans would not be made under the authority of Article 1.04 but rather by authority of Article 16, Section 11 of the Texas Constitution and Article 1.02. Also I am convinced that the Legislature did not intend to alter the previous law in this area.

I am of the opinion, therefore, that a person can make loans under the authority of Article 16, Section 11 of the Texas Constitution and of Article 1.02 at a rate not exceeding 10% per annum and not come under the provisions of Article 1.04.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner