



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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June 23, 1981 No. 81-6

Mr. Dan L. Nicewander
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Attorneys at Law
1700 Republic National Bank Bldg.
Dallas, Texas 75201

Dear Mr. Nicewander:

This is in response to your letter dated May 27, 1981 in which you request that we set out the position of this Office in regard to two questions concerning Articles 1.04(n)(1) and 4.04(4), Article 5069, V.A.C.S.

In your first question, you inquire whether under the provisions of Article 1.04(n)(1) an installment loan to a corporation or partnership for the purchase of a motor vehicle(s) to be used for a business or commercial purpose would be subject to the provisions of Chapter 4. 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." (Emphasis added.)

The above underlined words were intended to provide, assuming the other criteria of the Article are met, that all loans made for the purchase of motor vehicles made under the authority of Article 1.04 must be made pursuant to Chapter 4, Article 5069. Therefore, in the circumstances you described, an installment loan to a corporation or other business entity for the purchase of a motor vehicle(s) for commercial purposes would be subject to Chapter 4, Article 5069. This position is based not only on the language of this Article but also on personal knowledge of the intent of the parties who drafted this provision.

You advised that it is your opinion that a bank would comply with the requirements of Article 4.04(4) if it complied with the disclosure requirements set forth in

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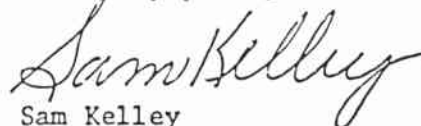
Sections 226.18(b), (f) and (g) of Regulation Z, as amended and any official rulings or interpretations issued by the staff of the Federal Reserve Board. You further suggested that these disclosures possibly could be made on either the face of the promissory note or on a separate disclosure statement in conformity with the requirements of Section 226.17(a) of the revised Regulation Z.

As you know, the repeal of Chapter 14 and the deletion of practically all the disclosure requirements from the loan and retail installment sales chapters of the Code by legislative action in 1979 was accomplished with the intent that the provisions of Federal Truth-in-Lending and Regulation Z would be controlling as to required disclosures for credit transactions otherwise subject to provisions of the Texas Credit Code. We have no reservation toward acknowledging that the federal law and official rulings or interpretations issued by the staff of the Federal Reserve Board are controlling with respect to transactions to which they are applicable and required. However, there is no federal requirement that the amount financed and the schedule of payments be disclosed in connection with a transaction that is made for business or commercial purposes; i.e. the loan to purchase an automobile to be used for commercial purposes described at the beginning of this letter. In such an instance, the provision of Article 4.04(4) remains applicable as a State required disclosure.

We must respectfully disagree with your opinion that the disclosure of amount financed and schedule of payments may be provided solely on a form separate from the promissory note. Article 4.04(4) clearly requires that "...any promise to pay..." or "...loan obligation..." disclose the amount financed and the schedule of payments. The types of instruments referred to in the Article are limited to those that evidence a debt and would not include a separate disclosure statement that, in itself, would not be evidence of the indebtedness.

I hope this reply is satisfactory for your purposes.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner