



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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October 7, 1982 82-24

Ms. Claudia B. Wilkinson
Fulbright & Jaworski
American Bank Tower, Suite 1740
221 West Sixth Street
Austin, Texas 78701

Dear Ms. Wilkinson:

This is to acknowledge receipt of your letter dated September 14, 1982 wherein you pose several questions dealing primarily with Chapter 4, Article 5069, V.T.C.S. (All statutory references in this response are to various provisions of Article 5069.)

Below is quoted a portion of your letter and the questions you have posed.

"The questions presented herein arise from the following described loan (the 'Loan'). The Loan provides for interest at a fixed rate that exceeds ten percent per annum, but does not exceed the indicated rate ceiling as that ceiling is defined in Article 1.04. Assume that the Loan is extended primarily for personal, family, or household use and that the lender is engaged in the business of making such loans. The entire principal of the Loan is advanced at the time the Loan is made and is due and payable on or before the maturity date. The Loan does not provide for installment payments of principal. There is no provision for readvancing any principal amounts voluntarily prepaid. Accrued interest on the unpaid principal of the Loan is payable quarterly during the term of the Loan and at maturity. The Loan is not secured by a lien on real estate. The initial term of the Loan is to be approximately six months, but the lender and the borrower anticipate that the Loan will probably be renewed one or more times in the same principal amount on similar terms. Neither the lender nor the borrower is, however, obligated to renew the Loan.

"Based upon the foregoing facts, please answer the following questions:

"a. Is the Loan a loan 'payable in two or more installments' for purposes of Article 1.04(n)(1), even though the Loan does not provide for installment payments of principal?

"b. Must the Loan comply with the requirements of Chapter 4?

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"c. Can a loan, such as the Loan, which is payable in a single payment of principal and which provides for two or more installments of accrued interest be made under the authority of Article 4.01(3)?

"d. Is the Loan an 'Open-end Account' as defined in Article 1.01(f)?"

Article 4.01(3) provides for what we refer to as "irregular" repayment loans and states (paraphrase) that such loans may be repayable in irregular or unequal installments either in amount or period of time between payments. Neither Article 4.01(3) nor any other provision imposes a requirement that the installment payments be in repayment of principal.

Article 1.04(n)(1) provides (paraphrase) that a loan made under the authority of Article 1.04 for personal family or household use, is payable in two or more installments, and otherwise meets the required criteria, is subject to Chapter 4. Again, there is no requirement that the installment payments be in repayment of principal. Thus, nowhere in any relevant provision of Article 1.04 or Chapter 4 is there a requirement that the repayment schedule result in a reduction of principal.

In response to your questions we therefore conclude that the Loan described in your letter is "payable in two or more installments" as contemplated by Article 1.04(n)(1), even though the loan does not provide for installment payments of principal. In our opinion the Loan is of the type described by Article 1.04(n)(1) and Chapter 4 and must meet the requirements of said Chapter 4. The Loan as described in your letter which is payable in a single payment of principal and which provides for two or more installments of accrued interest can be made under the authority of Article 4.01(3). The Loan would not be, in our opinion, an "Open-end Account" as that term is used in Article 1.01(f).

Sincerely,


Sam Kelley
Consumer Credit Commissioner

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