



STATE OF TEXA

# OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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AUSTIN, TEXAS 78768 512 / 475-211

October 27, 1982 82-26

Ms. Claudia B. Wilkinson  
Fulbright & Jaworski  
Bank of the Southwest Building  
Houston, Texas 77002

Dear Ms. Wilkinson:

This is to acknowledge receipt of your letter dated September 30, 1982 in which you describe a hypothetical type of loan and then pose several questions concerning Article 1.04(n)(1) and Chapter 4, Article 5069, V.T.C.S. as to how those provisions would relate to the proposed loan. In order to precisely set out your inquiry I will below quote a portion of your letter. (All statutory references are to provisions of Article 5069, V.T.C.S.).

Your letter states as follows:

"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. Interest will accrue on the principal amount from time to time outstanding. The principal of the Loan may be advanced from time to time during the term of the Loan as requested by the borrower up to a certain maximum amount each year. In addition, the total amount advanced during the term of the Loan shall not exceed the face amount of the promissory note evidencing the Loan. There is no provision for readvancing any principal amounts voluntarily prepaid. The entire principal amount of the Loan is due and payable on or before the maturity date. The Loan does not provide for installment payments of principal. Accrued interest on the unpaid principal of the Loan is payable quarterly and at maturity. The Loan provides for sufficient amounts to be advanced directly to the lender from the principal of the Loan to pay such installments of interest. The Loan is made for personal, family or household use, and the lender is engaged in the business of making such loans. The Loan is not secured by a lien on real estate. The Loan is to be for a fixed term in excess of one year.

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

"a. Is the Loan subject to Chapter 4?

"b. 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 to be paid by advances from the principal of the loan, be made under the authority of Article 4.01(3)?

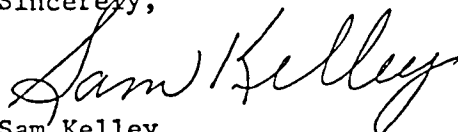
"c. Is the Loan an "Open-end Account" as defined in Article 1.01(f)?"

Response to your questions:

Article 1.04(n)(1) provides that certain loans made under the authority of Article 1.04 which are for personal, family, or household use, are not secured by real estate, are made by a person engaged in the business of making such loans, and are payable in two or more installments are subject to Chapter 4. In Letter Interpretation No. 82-24, dated October 7, 1982 we expressed our views that Article 4.01(3) authorizes "irregular" repayment loans. We believe that the proposed loan described in your letter which provides for quarterly repayment of accrued interest only is such an "irregular" repayment loan authorized by said Article 4.01(3). It is our position (as described in Letter Interpretation 82-24) that there is nothing in Chapter 4 nor Article 1.04 which would require that the repayment schedule result in a reduction of principal. It is our position therefore that since your described loan otherwise meets the criteria of Article 1.04(n)(1) and is repayable in two or more installments that it is subject to Chapter 4. The fact that the accrued interest may be repaid by advances from the principal does not, in our opinion, affect the above stated conclusion.

It is our view that the described loan is not an "open-end account" as that term is defined in Article 1.01(f). This type of loan seems to be very similar to the "advancing" promissory note discussed in our Letter Interpretation No. 81-24 dated October 9, 1981, which note we believed to not be an "open-end account." In your proposed note the parties agree to the amount to be advanced; the lender is obligated to advance that amount if the debtor so requests; the maximum possible amount of the advances is known; and there is no provision for the "readvancing" of any amounts of principal which might be prepaid during the term of the loan. It is our position that your described proposed loan is not an "open-end account" as defined by Article 1.01(f).

Sincerely,



Sam Kelley  
Consumer Credit Commissioner