



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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February 4, 1982 No. 82-5

Mr. James C. Lederer
Associate Counsel
Texas Bankers Association
203 West Tenth Street
Austin, Texas 78701

Dear Mr. Lederer:

This is to acknowledge receipt of your letter dated December 3, 1981, in which you pose several questions concerning the assessment of interest charges on loans subject to the provisions of Chapter 3, Article 5069, V.T.C.S., in the event of default on installment payments, default and acceleration of the entire balance owed, and after maturity whether coming about by acceleration or otherwise.

Article 3.15(5) provides for interest after default on an installment in precomputed transactions both "regular" and "irregular." The first sentence of that Article is applicable to precomputed "regular" loans and provides for additional interest for default on an installment not to exceed Five Cents (5¢) of each One Dollar (\$1.00) of any scheduled installment which remains unpaid for ten days or more. The last sentence of Art. 3.15(5) provides for interest for default in precomputed "irregular" Chapter 3 loans. It states that the loan contract may provide for interest from the maturity date of any installment until paid at a rate not exceeding the highest lawful contract rate. H.B. 1228 passed by the 67th Legislature and now in most part codified as Art. 1.04 did not amend Chapter 3 so as to provide that the alternative interest rates now provided for in Art. 1.04 could be charged on Chapter 3 loans. It is our position that the Art. 1.04 rates may not be assessed on Chapter 3 loans for their contracted term if repaid as agreed. However, it is our opinion that the last sentence of Art. 3.15(5), which was part of the statute prior to the 67th Legislative Session, authorizes the parties to a Chapter 3 loan to rely upon interest statutes other than Chapter 3 in contracting for interest to be charged on past due installments on precomputed "irregular" transactions. Therefore, on these types of transactions the parties may contract for interest on past due installments at rates as authorized by Art. 1.04.

With regard to Chapter 3 loans wherein interest is computed on a simple basis, we believe the third paragraph of Art. 3.15(6)(b) to be applicable, which paragraph is quoted below.

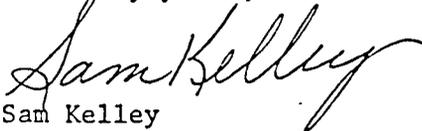
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"If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full."

Obviously, the contract rate may be charged during the scheduled term of the contract if acceleration does not occur. Inasmuch as the above-quoted provision authorizes interest earnings at the contract rate "...until the date of payment in full...", we conclude that the interest rate contracted for during the term of the loan may also be contracted for and earned on any unpaid principal balance remaining unpaid after the final maturity date as scheduled in the contract. However, since the statute provides that "...interest may be earned on the principal balance...at the rate contracted for, until the date of...demand for payment in full.", we do not believe that the Chapter 3 authorized rate should be either contracted for or received following demand for payment in full. In the latter instance we feel the parties could contract for a rate authorized by the provisions of Art. 1.04. Thus, it appears appropriate that contracts subject to the foregoing provide for two separate "interest after maturity" clauses, one applicable before demand for payment in full and the other applicable after such demand.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner