



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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March 26, 1982 No. 82-9

Mr. Robert J. Clary
Johnson, Bromberg & Leeds
Attorneys at Law
4400 Republic National Bank Tower
Dallas, Texas 75201

Dear Mr. Clary:

This is to acknowledge receipt of your letter dated February 16, 1982 in which you request our views concerning a proposed open-end credit program to be offered by a national bank and which program would be subject to Chapter 15, Article 5069, V.T.C.S.

You state in your letter that the bank would apply an interest charge to advances under the program as authorized by Art. 1.04, Article 5069. The participants in the program would be issued "special checks" which would be identical in form to those checks utilized in connection with the bank's regular checking accounts. The "special checks" would be coded so that when a draft in the form of a "special check" is received by the bank, the bank makes what it terms a "cash loan" to the maker instead of debiting the maker's checking account. The participants could use the "special checks" in various ways including paying for purchases of goods from retailers. However, the bank would have no agreement with third parties such as merchants that the "special checks" could be accepted in payment of goods and services, and there would be no third party participation in the program. You ask our opinion as to whether Art. 15.02(d), which requires a "free period" on purchases, would be applicable to the credit plan outlined in your letter in the event the "special checks" were used to pay for purchases.

It is our opinion that Art. 15.02(d) would not be applicable to the program outlined in your letter. It is our view that Chapter 15 authorizes two basic types of open-end credit plans. The first is set out in 15.01(k) and labeled a "Revolving loan account" and is an arrangement between a creditor and a customer establishing an open-end line of credit whereby the customer may obtain loans from the creditor. No mention is made in (k) of any involvement of third parties nor of purchases; only loans. On the other hand, Art. 15.01(l) authorizes a "Revolving triparty account" under which the customer may obtain cash loans as under a revolving loan account but may in addition, by use of a credit card, lease or purchase goods or

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services from participating lessors or sellers. Purchases are referred to and contemplated by Art. 15.01(l) relating to triparty accounts but are not mentioned in Art. 15.01(k) relating to revolving loan accounts where the plan involves only the creditor and the borrower and no third party.

It is our view that the type of program outlined in your letter is a "Revolving loan account" as defined by Art. 15.01(k) and that the transactions made pursuant to the plan are considered loans and not purchases as that term is contemplated in 15.02(d). It is our view that 15.02(d) was intended to be applicable to "purchases" made pursuant to a "Revolving triparty account" as defined by Art. 15.01(l) and in which goods or services are obtained from a third party participant in the credit plan. Therefore, as previously stated, it is our opinion that the provisions of Art. 15.02(d) would not be applicable to the open-end credit plan as proposed in your letter.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner