



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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August 20, 1984 R4-8

Mr J. Scott Sheehan
Taylor, Hays, Price, McConn
and Pickering
Attorneys at Law
400 Citicorp Center
1200 Smith Street
Houston, Texas 77002

Dear Mr. Sheehan:

This is to acknowledge receipt of your letter dated July 18, 1984 concerning a proposed change in a bank overdraft credit plan. The portion of your letter which sets out your inquiry is as follows:

"The bank currently operates an overdraft credit plan under Chapter 15 for which the rates authorized by Article 5069-1.04, as amended, have been implemented. The account agreements presently provide for the "average daily balance" method, monthly billing cycles, and a monthly periodic rate of 1.5%, corresponding to an annual rate of 18%.

"The bank is purchasing a new computer system that computes interest using annual rates rather than monthly periodic rates. The bank as a precaution therefore wishes to amend the existing account agreements to provide that the applicable portion of the average daily balance will be multiplied by the annual rate of 18% based upon the actual number of calendar days in the billing cycle, using the rate of 18% per annum.

"Our question is whether the notice requirements of Article 5069-1.04(i) would be applicable to the proposed change. In our view, the proposed change is only technical in nature, does not increase the interest rate, would be non-adverse to the customer, and therefore we believe that the notice contemplated by Article 5069-1.04(i) is not required in making this particular change."



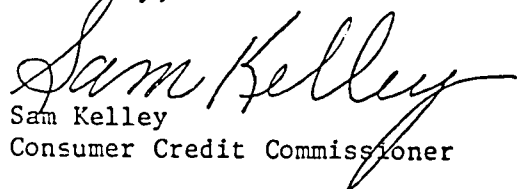
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It is the position of this office that the above described change in the overdraft credit plan may be made by the bank without the bank having to give the notice prescribed in Article 5069-1.04(i), V.T.C.S. The Article 1.04(i) notice is required when there is a change in the terms of an open-end account or in the rate (in the case of fixed rate contracts) or in the index, formula, or provision of law used to compute the rate (in the case of variable rate contracts). In the example given in your letter in our view there is no change in the terms of the agreement. There is no change in the rate of interest charged participating obligors. These are not variable rate contracts which have an index, formula or provision of law used to compute the rate as specified in Article 1.04(f) and Article 1.04(i)(1). It is true that the last sentence of Article 1.04(i)(1) and Article 1.04(i)(1)(A) use the word "provision" rather than the phrase "provision of law" when referring to changes requiring the Article 1.04(i) notice. However, we believe that the use of the word "provision" in those instances is in reference to the previously stated "provision of law" phrase applicable to variable rate contracts, and therefore not applicable to the types of contracts described in your letter. Therefore, as previously stated, it is the opinion of this office that the bank does not have to give the Article 1.04(i) notice to effect the change described in your letter.

The agreements entered into pursuant to the plan may be amended as prescribed by Article 5069-15.05, V.T.C.S. Since the change is not adverse to the customer the "90 days" requirement of Article 15.05 is not applicable. The notice given should meet any requirements of Regulation Z.

Sincerely,


Sam Kelley
Consumer Credit Commissioner

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