



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

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SAM KELLEY, Commissioner

December 9, 1985 85-17

Ms. Judy K. Winkel
Associates Corporation of
North America
P. O. Box 660237
Dallas, Texas 75266-0237

Dear Ms. Winkel:

This is to acknowledge receipt of your letter dated November 27, 1985 requesting an interpretation of several provisions of Article 5069, V.T.C.S. The question you ask is as follows:

"May the premium for non-filing insurance be charged a loan or sales finance customer in connection with a loan transaction under Chapter 3 or 4 of the Texas Credit Code or a sales finance transaction under Article 6? The premium would be used to purchase insurance in lieu of perfecting a security interest and would not exceed the amount of the usual filing fee for perfecting a security interest."

Article 5069 - 3.15(8) and 4.01(7) authorize lenders to assess borrowers certain charges other than interest on loans made pursuant to Chapters 3 and 4. Both of the above mentioned sections are identical and in the last sentence of each allow a lender to charge "lawful fees for filing, recording, or releasing to any public office any instrument securing a loan," but only to the extent such amounts are actually incurred by the lender. Therefore, it is our position that on loans made pursuant to Article 5069 - Chapters 3 and 4, non-filing fees (premiums) may not be charged to borrowers.

The provisions of Chapter 6 of Article 5069 relative to your question are different from those of Chapters 3 and 4. Article 6.01(j) sets out the "Itemized Charges" which may be included in Chapter 6 transactions. The "Itemized Charges" in Article 6.01(j)(i) include "the amount of the fees prescribed by law for filing recording, or otherwise perfecting and

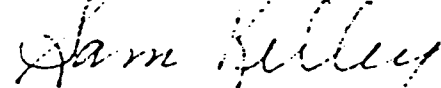


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releasing or satisfying, a retained title lien or other security interest created in connection with a retail installment transaction." There is no requirement in Chapter 6 that the filing fees be actually incurred by the creditor. Therefore, it is the position of this office that the filing fees authorized by Article 6.01(j)(i) need not necessarily be paid as a filing fee to a recording agency but may be utilized as a premium payable for insurance in lieu of perfecting a security interest. The amount of the fee/premium charged on each separate transaction should not exceed the lawful amount necessary to file a standard form UCC-1 Financing Statement.

Sincerely,



Sam Kelley
Consumer Credit Commissioner