STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

AL ENDSLEY, Commissioner

2601 NORTH LAMAR
AUSTIN, TEXAS 78705-4207

(512)479-1280
(214)263-2016
(713)461-4074

Writer's Direct Number: 479 1292

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Letter Interpretation 88-2

Ms. Cynthia J. Harkins
Liddell, Sapp, Zivley, Hill
and LaBoon
1200 Texas Commerce Tower
2200 Ross Avenue
Dallas, Texas 75201

Dear Ms. Harkins:

You have proposed a somewhat different scenario for the financing of hospital patients' accounts than has been previously addressed in numbered, interpretive letters. Those letters are 85-1, 85-3 and 85-11.

Letter Interpretation 85-1 essentially provides that financing by a third party at an interest rate of 10% per annum or less is authorized by Article 5069-1.02, Vernon's Texas Civil Statutes, and Art. 16, Section 11 of the Texas Constitution, does not require licensing. Such loans are not subject to Art. 5069-1.04 or to Subtitle II or Chapter 15 of Art. 5069. Letter Interpretations 85-3 and 85-11 may be summarized to permit hospitals to enter into open end or closed end interest bearing accounts subject to Art. 5069 - Chapter 1. Interest as authorized by Art. 1.04 is permitted. Accounts may be assigned to others and such assignments may require repurchase of delinquent accounts. Such accounts are not subject to Art. 5069 - Subtitle II.

The proposed method of operation is described in your letter as follows:

> "Under the contemplated method, the hospital would complete the bank's copy of a document containing the necessary loan information, inserting the amount of the loan, as well as the rate and the term thereof. This document would be sent by courier to the loan division of the bank. The bank would originate a standard loan contract which would show the hospital and the patient as co-makers. The hospital would pick up the document or the bank would deliver it to the hospital and the hospital would arrange for the patient to be at the hospital in order to sign the contract or the hospital would mail the contract to

the patient. As mentioned, the hospital and the patient would sign as co-makers. Once signed, the note would be couriered to the bank and the bank would fund the amount of the loan into the hospital's operating account. The bank would be responsible for any required disclosures as well as mailing the payment book to the patient. If the note becomes 90 days past due, the bank would debit the hospital's account at the bank and assign the contract to the hospital."

You have also stated that you understand the program to be in compliance with the provisions of Art. 5069 - Chapters 3 and 4 to the extent that those provisions are applicable to the bank and that if structured as an interest-bearing transaction it would be subject to Art. 1.04.

I believe that the underlying questions and issues may be addressed as follows:

1) The transaction is a loan of money by the bank and would be subject to Chapter 3 or 4 of Art. 5069. The hospital's participation as a co-maker in two or more loans subject to Chapter 3 may violate Art. 3.15(7).

2) If structured as interest-bearing the transaction may or may not be subject to Art. 1.04. Art. 3.15(3) and (4) and 4.01(3) and (4) provide for certain types of interest-bearing accounts. If subject to Chapter 3, the transaction could not be subject to Art. 1.04 since Chapter 3 does not adopt the alternative rates of Art. 1.04. If subject to Chapter 4 and in conformity with Art. 4.01(1), (2) and (3) or (4) the transaction is not necessarily subject to Art. 1.04. If an interest charge in excess of that authorized in Art. 4.01(1) or its equivalent yield is charged, then the transaction is subject to Art. 1.04 but not to the exclusion of Chapter 4 provisions.

3) While the hospital is not considered to be a lender of money in the proposed transactions and would not require licensing as a lender Art. 3.01(1) and 1.04(n)(1), in slightly different language, require licensing of persons negotiating or arranging loans which are subject to Chapters 3 or 4. It is my view that the activities of the hospital as you have described them constitute negotiating or arranging loans and would therefore require licensing of the hospital under Chapter 3. Art. 3.01(1) also provides that only a licensed person (or bank or savings and loan association) may charge or receive any charges on loans which are greater than would be permitted if that person were not an authorized lender. Based on this language it is also my view that any person receiving assignments of loans subject to Chapters 3 and/or 4 must be licensed unless expressly exempt.

Sincerely,

Al Endsley
Commissioner