



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

AL ENDSLEY, Commissioner

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March 30, 1993

RQ-92-2

Mr. Mark D. Morris
Baker & Botts
1600 San Jacinto Center
98 San Jacinto Blvd.
Austin, TX 78701-4039

Dear Mr. Morris:

RE: Interpretive Letter Request

You have requested an interpretive letter from this office to the effect that national banks, insured state banks, and insured savings associations "may make loans which would otherwise be subject to the provisions of Subtitle 2 or Chapter 15 of the Texas Credit Code (the 'Consumer Chapters'), Tex. Rev. Civ. Stat. Arts. 5069-2.01 *et. seq.*, 5069-15.01 *et seq.* charge a rate under Article 1.04 of the Credit Code, Tex. Rev. Civ. Stat. Art. 1.04, and not be subject to the provisions of the Consumer Chapters, notwithstanding Article 1.04(n) of the Credit Code, because of federal preemption as provided in 12 U.S.C. §§85, 1831d and 1463(g), and Tex. Rev. Civ. Stat. Art. 2461-7.01."

You have expressly requested this interpretive letter pursuant to Articles 1.04(p) and 2.02A(10) of the Texas Credit Code which read as follows:

1.04(p) A person does not violate this Title by contracting for, charging, or receiving any rate or dollar amount, or by any acts done or omitted, that conform to the provisions of this Article, or to the provisions determined by the consumer credit commissioner, or that conform to an interpretation of this Title by the consumer credit commissioner under Section (10) of Article 2.02A or by a decision of an appellate court of this state or of the United States in effect at the time that the acts were done or omitted.

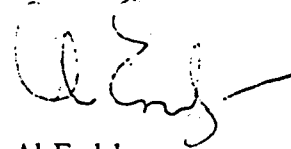
2.02A(10) The Consumer Credit Commissioner may issue interpretations of this Title. The issuance of an interpretation is not subject to the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) that relate to the adoption of rules. The Consumer Credit Commissioner shall publish in the Texas Register, in a form prescribed by the appropriate Commission, a request for an interpretation no later than 10 days after the receipt of the request. Before an interpretation may be issued by the Consumer Credit Commissioner, the interpretation must be approved by the appropriate Commission. An interpretation approved by that Commission shall be published in the Texas Register no later than

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10 days after the interpretation has been approved by that Commission, in a form prescribed by that Commission. As used in this section, "this Title" means Title 79, Revised Statutes, but does not include any law that is not officially a part of Title 79, although it may be editorially compiled as a part of the title.

I find that the requested interpretation is not within the scope of the statutory authority granted to the consumer credit commissioner in that it involves an interpretation of federal law. I therefore decline to issue an interpretive letter as requested.

Sincerely,



Al Endsley

AE:jjm

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This interpretation was approved by the Finance Commission of Texas at its meeting on March 30, 1993, pursuant to Article 5069-2.02A(10), Vernon's Texas Civil Statutes.