



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

1011 SAN JACINTO (512)475-2111
POST OFFICE BOX 2107 (214)263-2016
AUSTIN, TEXAS 78768 (713)461-4074

October 11, 1983 83-10

Mr. John B. Lederer
Texas Credit Union League
and Affiliates
P. O. Box 225147
Dallas, Texas 75265

Dear Mr. Lederer:

This is to acknowledge receipt of your letter dated September 22, 1983 in which you ask our view as to whether state chartered credit unions are required to comply with the provisions of Article 5069-Chapter 6A, V.T.C.S., which Chapter pertains to the financing of the retail purchases of manufactured housing.

In 1981 the Texas Legislature amended the then existing Chapter 6A and indicated by the new provisions that the chapter as revised would apply to both loans and retail installment contracts entered into for the purpose of financing the retail purchases of manufactured housing. (Please see Chapter 6A-Section 1. PURPOSE). Also, the definitions of "Creditor" and "Credit Transactions" in Chapter 6A-Sections 2(c) and 2(d) would indicate that Chapter 6A was intended to apply to all typical financing of the retail purchases of manufactured housing. Also, in 1981 the Legislature enacted Chapter 6A-Section 3(7) which stated as follows:

"The provisions of this chapter shall apply to credit transactions as defined by Subsection 2(d) notwithstanding any provision of Article 1.04 of this title."

Therefore, the various provisions of Chapter 6A which became effective after the 1981 Session of the Texas Legislature would seem to have indicated a legislative intent to include all financing of retail sales of manufactured housing within the scope of Chapter 6A, including that financing done by state chartered credit unions.



It should be noted that during the 1981 legislative session when the above mentioned provisions of Chapter 6A were enacted, H.B. 1228 was passed and a portion of that bill added Article 5069-Article 1.04(n)(6), the last sentence of which stated that "...Notwithstanding this Article, credit unions are not subject to Chapter 15 or Subtitle 2 of this Title and are not required to obtain a license under this Title." (Chapter 6A is a part of Subtitle 2, Article 5069). However, because of the earlier quoted language of Chapter 6A-Section 3(7) providing that Chapter 6A would be applicable to defined credit transactions notwithstanding the provisions of Article 1.04, it was our informal view prior to the 1983 legislative session that state chartered credit unions should comply with Chapter 6A. (In Letter Interpretation Number 82-17, July 29, 1982 we stated that in our view federal credit unions did not have to comply with Chapter 6A because of a federal preemption.)

Then, after all of the above mentioned legislative events occurred, the 1983 Texas Legislature made additional relevant changes. House Bill 853 repealed Chapter 6A-Section 3(7) which prior to its repeal had caused our office to be of the opinion that state chartered credit unions were subject to Chapter 6A. The 1983 legislature, in Senate Bill 405, also repealed the last sentence of Article 1.04(n)(6)(quoted earlier) but the same bill reenacted virtually the same language as Article 5069-Article 1.10(a), which is as follows:

"(a) Notwithstanding Article 1.04 of this title, a credit union is not subject to Chapter 15 or Subtitle 2 of this title and is not required to obtain a license under this title."

Thus, the 1983 legislature reenacted the provision in Chapter 1 stating that credit unions were not subject to Chapter 6A and also repealed the provision in Chapter 6A(Section 3(7)) which made Chapter 6A applicable notwithstanding the provisions of Article 1.04. If the legislature had stopped here it would seem that credit unions would not be subject to Chapter 6A. But the 1983 legislature went one step further in House Bill 1054-Section 35 with an amendment to Article 2461-7.01, V.T.C.S. The sentence added to that statute by H.B. 1054 is as follows:

"Chapter 15 and Subtitle 2, Title 79, Revised Statutes (Article 5069-2.01 et seq., Vernon's Texas Civil Statutes), do not apply to a credit union loan or extension of credit unless the agreement evidencing that transaction specifically provides otherwise."


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It is our opinion that because of Article 5069-1.10(a) state chartered credit unions are not required to comply with the provisions of Chapter 15 or Subtitle 2 of Article 5069, V.T.C.S. but because of Article 2461-7.01 they may avail themselves of those statutes if they enter into contracts which specifically provide that such provisions are applicable.

Contracts entered into pursuant to the provisions of Chapter 6A which are subsequently acquired by a credit union remain subject to that chapter.

Sincerely,


Sam Kelley
Consumer Credit Commissioner