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December 30, 1985 85-18

Mr. Hennon Gilbert
Gilcom Corporation 10715 Gulfdale
San Antonio, Texas 78216
Dear i:r. Gilbert:
This is to acknowledge receipt of your letter dated Decenber 9, 1985 concerning loans made pursuant to Article 5069 - Chapter 5 prior to that chapter's amendment during the 1985 Texas Legislative session by Senate Bill 1152, which became effective August 26, 1985.

From the time of its enactment in 1967 until the above mentioned amendment in 1985, there was never a provision in Chapter 5 which authorized loans other than those which were repayable in consecutive monthly installments. Although other chapters of Article 5069 provided for contracts in which the first repayment period could be a period of time other than one month from the date of the contract, Chapter 5 (prior to Senate Bill 1152) had no such provision. Therefore, prior to August 25, 1985, it was the position of this office that since there was no authorization in Chapter 5 for an extended first payment period loan (for example, a first payment period of one month plus fifteen days) that if such a loan were made, there should be no interest charged for the additional days in excess of one month in the first payment period. (It should be noted that as of August 26, 1985, there is authorization in Chapter 5 for irregular repayment transactions.)

In your letter you set out an example of a Chapter 5 loan made prior to August 26, 1985, which loan was made with an irregular first payment period, and ask whether in our opinion such loan would be usurious and thus subject to the penalties of Chapter 8 of Article 5069 for the charging of excessive interest. For the purposes of this response it is assumed that the example loan was made at a time when the applicable usury ceiling was $18 \%$ per annum.


A portion of your letter including the example is as follows:
"In a transaction with an irregular first payment term, an effective interest rate, be it of the simple interest or add-on type, may be derived for any amount of interest charge, without allocating part of such charge to the irregularity in the first payment term. It would seem that if the rate so derived does not exceed the maximum allowable rate, the agreed-to amount charged would likewise not be excessive. The following example will illustrate this point:

Loan amount . . . . . . . . . $\$ 10,000.00$
First payment term. . . . . . 1 month plus 15 days
Repajment schedule. . . . . . 59 ronthly payments of $\$ 234.01$
1 payment of $\$ 233.63$
Derived simple interest rate= $14.0000 \%$
The total of the payments contracted is. . . \$14,040.24
Subtract the amount financed . . . . . . . . 10,000.00
Resulting amount of contracted charge. . . . 4,040.24
"When interest is not charged for the 15 odd days, a simple interest rate of $14.25480502 \%$ will produce the identical payment schedule, hence the identical amount of charge. Since this rate exceeds neither the maxinum allowable rate nor any contracted rate (there having been no rate contracted), its corresponding contracted charge is not excessive. For Chapter 5 loans contracted prior to May 8, 1981, a similar procedure would be used to compare the actual contracted charge with that produced by an $8 \%$ add-on rate."

It is our position that since the interest rate charged in the above set out example loan did not exceed the applicable ceiling of $18 \%$ per annum that such loan would not be usurious. Our position would be the same with regard to transactions made prior to May 8,1981 , provided the interest charged on the loan did not exceed that produced by an eight dollar add-on rate (the maximum allowable charge in Chapter 5 prior to May 8, 1981).


