STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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March 1, 1985 85-3

Mr. William H. Daniel
McGinnis, Lochridge and Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

Dear Mr. Daniel:

This is to acknowledge receipt of your letter dated January 14, 1985 wherein you request an interpretation by this office of various provisions of Article 5069 - V.T.C.S. as they might or might not be applicable to a proposed credit program outlined in your letter. I will outline the proposed fact situation by quoting a portion of your letter and then respond to your various inquiries. Your letter states, in part, as follows:

> "In order to provide financing for services they provide, various hospitals are contemplating entering into revolving charge account agreements with patients and prospective patients. The revolving charge account agreement would allow the patient to acquire the services provided to the patient by the hospital (including employees of the hospital). The account will not be used to finance charges for goods or services provided by persons not employed by the hospital. No credit card will be involved. After the account has been opened, the account balance will be assigned to an assignee who will then service and collect the account as the owner of the balance. In the event of delinquency, the assignee will have the right, 90 days after delinquency occurs, to refer the account back to the hospital for repurchase. The finance charge rate will be set by the hospital subject to approval of the assignee. Accounts will be purchased at a discount, the amount of which will depend upon the size of the average charge. There will also be an adjustment made between the hospital and the assignee depending upon the prime rate in effect at the major New York banks. If the prime rate exceeds the designated level, then the hospital will pay to the assignee a designated charge. If the prime rate is less than the designated level then the assignee will pay a premium to the hospital.

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> "The arrangement bears similarities to the typical arrangement whereby an automobile dealer provides sales financing for the products and services he sells and discounts the paper to an assignee, and to the situation in which a retailer provides sales financing to its customers and then assigns the account balances or sales finance paper to an assignee at an agreed discount.
>
> "It is our understanding that the arrangement proposed would, if structured as an interest bearing type of transaction, be subject to Article 5069 - 1.04 Tex. Rev. Civ. Stat.. We also understand that the hospital would not be required to have a loan license since it is not lending money but only financing the goods and services which it provides to the patient. Likewise, we understand that the assignee would not be required to have a loan license purchasing account balances which arose from the credit sale of goods and services by the hospital.. We also understand that the transaction would not be subject to Chapter 6 of Article 5069 since that chapter excludes hospital and medical services. Accordingly, in the interest bearing form, we understand the transactions would be subject only to Article 5069 - 1.04, and not to the licensing or other requirements applicable to transactions subject to Subtitle Two and Chapter 15 of Article 5069."

Article 5069 - 1.04(a), V.T.C.S., provides that "The parties to any written contract may agree and stipulate for any rate of interest, or in an agreement described in Chapter 6, 6A, or 7 of this Title, any rate or amount of time price differential producing a rate that does not exceed...." As can be seen, the above quoted provision allows, as a general rule, the parties to a written agreement to agree to the rates of interest authorized by Article 1.04. Other provisions of Article 5069 such as Articles 3.01, 4.01, 5.01, 15.01, 1.04(n)(1), (n)(2) and (n)(5), provide that a person who engages in the business of making loans or lending money needs to obtain a license from this office and/or comply with the applicable chapter of Subtitle Two or Chapter 15 of Article 5069. It is our basic view that the Texas Legislature has provided a general authority in Article 1.04(a) for persons in Texas to charge the interest rates authorized in that section and then gone farther in other provisions such as quoted above to provide however that if a person is engaged in the business of lending money or in making loans as covered by those chapters then such person must get a license and/or comply with the applicable chapter.

It is our view that in the fact situation described in the earlier quoted portion of your letter neither the hospitals originally extending the described credit nor the assignee of the accounts is engaged in the lending of money which would make the described credit extension subject

to Article 5069 - Chapters 3, 4 or 15. Therefore, neither the hospitals nor the assignee of the accounts would need a license from this office to engage in this type of extensions of credit.

We also agree that the described transactions would not be subject to the provisions of Article 5069 - Chapter 6 because of the exclusion from that chapter of medical services (Article 6.01(b)).

It is the opinion of this office therefore that the credit extensions described in your letter may be made pursuant to Article 5069 - Chapter 1, V.T.C.S. and that the hospitals extending the credit and the assignees of the accounts are not required to obtain licenses from this office to engage in this type of credit extensions.

Sincerely,

Sam Kelley

Sam Kelley
Consumer Credit Commissioner