



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

April 20, 1970

Honorable Bruce Gibson
Credit Union Commissioner
900 Congress Avenue
Austin, Texas 78701

Opinion No. M-610

Re: Whether the Credit Union
Commissioner has the author-
ity to enter into a proposed
cooperative program with the
Federal Trade Commissioner
to facilitate the enforcement
of the Truth in Lending Act.

Dear Mr. Gibson:

Reference is made to your letter in which you request an opinion from this office as to the captioned matter. Your letter reads as follows:

"This Department has before it for consideration a request from the Federal Trade Commission, Washington, D. C., asking that their proposed examination questionnaire regarding the Federal Truth-In-Lending Act relative to State Chartered Credit Unions be made a part of our regular examination reports required by Article 2461, Section 32(a), V. C. S.

"Copies of the questionnaire and Truth-In-Lending Liaison Agreement are attached for your inspection.

"In view of this state supervisory agency involving itself with a Federal law through its examinations, I would appreciate your opinion as to whether we might be jeopardizing our position legally as a state agency."

The Truth in Lending Liaison Agreement to which you allude reads, in part, as follows:

". . .

"Under said Act, the (Federal Trade) Commission is charged with enforcement responsibility in regard to all non-Federally regulated licensed and/or examined consumer creditors in the State. Since (Texas) Department examiners regularly inspect and have other contact with said grantors of credit, the Department hereby agrees to enter into a voluntary cooperative Truth in Lending enforcement program relative to these creditors.

"The Commission hereby agrees to:

"1. Assist in the education and training of Department inspection and examination personnel, as may be requested by the Department;

"2. Supply the Department with appropriate forms, tables, and guidelines, as requested by the Department; and

"3. Report to the Department any alleged violations of the Act by companies doing business in that State but not doing business in interstate commerce.

"The Department hereby agrees to:

"1. Investigate any reports of violations of the Act it receives either directly from Consumers or from the Commission; and

"2. Report after examination or investigation any violations of the Act, along with supporting documentation, to the Commission.

". . . It may be cancelled upon written notice by either party to the other. "

Adverting to the questionnaire, as proposed by the Federal Trade Commission, we note that it is comprised of thirty-six questions or items, several with multiple parts, a number of which involve matters that are neither expressly or impliedly within the duties and responsibilities conferred by statute upon the Credit Union Department.

Article 2461-32, Vernon's Civil Statutes, The Credit Union Act, entitled "Examinations" reads, in part, as follows:

"(a) The Credit Union Department annually shall examine, or cause to be examined, each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of said department full access to all books, papers, securities, records, and other sources of information under their control . . .

"(b) A report of such examination shall be forwarded to the chairman of the board of each credit union . . .

"(c) For the purpose of such examinations each credit union shall pay an examination fee based upon the cost of performing the examination and to bear a proportionate share of the expenses of the Credit Union Department . . . but not to exceed \$75 per day per person engaged in such examination. "

The Credit Union Act, Article 2461-47, Vernon's Civil Statutes, sets out the powers and duties of the Credit Union Commissioner. This article provides, in part, as follows:

"(a) By and with the advice and consent of the Senate, the Credit Union Commission shall elect a Commissioner of Credit Unions who shall be an employee of said commission and subject to its orders and directions . . .

"(b) . . .

"(c) . . .

"(d) Upon the appointment and qualification of a Credit Union Commissioner under this Act, such Credit Union Commissioner shall . . . supervise and regulate in accordance with the rules and regulations promulgated by the Credit Union Commissioner together with the Credit Union Commission, all credit unions doing business in this state (except federal credit unions organized and existing under federal law) and he shall have and perform all of the duties and shall exercise all of the powers theretofore imposed upon the Banking Commissioner . . ."

The question presented to us is whether the Credit Union Commissioner has the authority to enter into a proposed cooperative Truth in Lending Liaison Agreement with the Federal Trade Commission, the purpose of which is to facilitate the enforcement of the Truth in Lending Act.

We answer the question in the negative.

A pertinent statement of the general rule is found in 81 C. J. S. 895, States, Sec. 7, which we quote:

"As a general rule . . . There is no constitutional inhibition preventing co-operation between the state and federal governments, where each acts within its appropriate sphere, and may at any time re-assert its full control over the subject matter of the agreement, and where the arrangement between the federal and state authority does not vest in federal authority powers amounting to substantial control over matters of local concern, co-operation between state and nation is lawful . . ."

However, this general rule is not applicable as will be hereinafter seen.

The terms of the proposed Truth in Lending Liaison Agreement reflects that the Credit Union Department would report to the Federal Trade Commission any violations of the Truth in Lending Act noted during a regular examination or a special investigation. The Credit Union Department would further agree to investigate any alleged violations of the Truth in

Lending Act when requested by the Federal Trade Commission and report the results of such investigation to the Commission. It appears that the effect of such agreement would cause the Credit Union Department to become an investigative branch or agency of the Federal Trade Commission, subject to the Commission's orders and directives in numerous matters, some of which are beyond the statutory jurisdiction of the Credit Union Department.

It is stated in 34 Tex. Jur. 440, 441, Public Officers, Sec. 67:

"Public officers and governmental and administrative boards possess only such powers as are expressly conferred upon them by law or are necessarily implied from the powers so conferred. They cannot legally perform acts not authorized by existing law . . ."

The case of Bryan v. Sundberg, 5 Tex. 418 (1849) announces the applicable law in the situation here presented:

"Statutes which prescribe and limit the exercise of official duty ought to receive a strict interpretation in respect to the powers conferred and the manner of their exercise, and those powers are not to be enlarged by construction. The officers must look to the act by which his office is created and its duties are defined to ascertain the extent of his powers and the line of his duties; and he is not at liberty to transcend the former or vary the prescribed mode of performance of the latter." (Emphasis added.)

In 43 Am. Jur. 68, Public Officers, Sec. 249, the following statement of the law is made:

"In general, the powers and duties of officers are prescribed by the Constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed and by the officer specified."

The Truth in Lending Act is codified as 15 U. S. C. A. 1601, et seq. We note that the proposed Agreement obligates the Credit Union Commissioner to:

"1. Investigate any reports of violations of the Act it receives either directly from Consumers or from the Commission; and

"2. Report after examination or investigation any violations of the Act, along with supporting documentation, to the Commission. "

Under these provisions the Credit Union Commissioner's obligations are expanded to include transactions and complaints by Consumers under the Federal Act, as well as directives from the Federal Trade Commission, none of which may have any connection whatever with the duties imposed upon the Credit Union Commissioner by the Texas statutes.

The Credit Union Act is without any provisions authorizing the Credit Union Commissioner to enter into a cooperative agreement, the terms and effect of which would expand his jurisdiction and duties and responsibilities, and limit his discretion, contrary to the statutes and law of this state.

You are, therefore, advised that the Credit Union Commissioner cannot enter into the proposed cooperative Truth in Lending Liaison Agreement with the Federal Trade Commission.

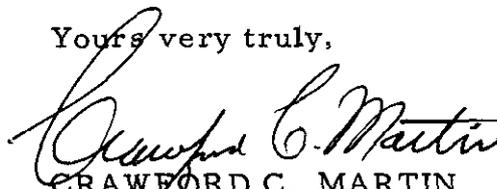
This office is cognizant of the fact that a need exists for cooperation between state and federal agencies for the adequate enforcement of the Truth in Lending Law and consequently limits the opinion herein expressed to the proposed Truth in Lending Liaison Agreement.

SUMMARY

The Credit Union Commissioner cannot enter into a proposed Truth in Lending Liaison Agreement with the Federal Trade Commission because the effect of such agreement would expand the jurisdiction, duties, and responsibilities of the Credit Union Com-

missioner as well as limit his discretion, contrary to the statutes and law of this state.

Yours very truly,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Ray McGregor
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
W.E. Allen, Acting Co-Chairman

Fielding Early
Arthur Sandlin
Jay Floyd
Camm Lary

MEADE F. GRIFFIN
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

NOLA WHITE
First Assistant