



GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

September 10, 1996

UCCC MATERIAL
FOR YOUR INFORMATION

RE: Subsidiaries of Supervised Financial Organizations and UCCC
Licensing

Dear :

This letter responds to your inquiry concerning the need for a subsidiary of a supervised financial organization to obtain a supervised lender's license under the Colorado Uniform Consumer Credit Code ("UCCC"). Your client is a Colorado state chartered bank. Consequently, it need not obtain a supervised lender's license in order to make supervised loans - consumer purpose loans with an annual percentage rate in excess of 12 per cent. See §§ 5-1-301(17), 5-3-501(1) & 5-3-502, C.R.S.

The Bank has organized a wholly owned subsidiary ("Lending Company") to make and take assignment of Colorado supervised loans, as well as other consumer and commercial loans. The Lending Company is, I assume, a corporation incorporated separately from the Bank but, as a subsidiary it is wholly owned by the Bank. Although under banking law the Bank may have legal authority to organize the Lending Company, the Lending Company subsidiary is not:

. . . organized, chartered, or holding an authorization certificate under the laws of this state [Colorado] or of the United States which authorize the person [Lending Company subsidiary] to make loans and to receive deposits, including a savings, share, certificate, or deposit account, and subject to supervision by an official or agency of this state [Colorado] or of the United States."

Section 5-3-301(17)(a) & (b), C.R.S. (emphasis added). The definition of "person" is any natural person, individual, or an organization. Section 5-1-301(13), C.R.S.

The Lending Company subsidiary corporation, while affiliated with and wholly owned by the Bank, is not authorized by the state or federal government to make loans and to receive deposits. Only the Bank possesses this authorization. In my opinion, the language is clear that the supervised financial organization licensing exemption applies only to financial institutions which:

- (1) are chartered by the United States or Colorado;
- (2) to make loans and receive deposits; and,
- (3) are subject to the supervision of the U.S. or Colorado.

The Lending Company subsidiary does not meet the requirement that it be chartered to receive deposits. The fact that the Bank may have the legal authority, under either state or federal law, to engage in other activities through its affiliates does not resolve the question of whether those affiliates must obtain a supervised lender's license in order to make supervised loans. I believe the answer to that question is that a supervised lender's license is required since the affiliate - the Lending Company subsidiary - is not chartered to received deposits.

The Colorado Comment published in the Colorado Revised Statutes to section 5-1-301 further supports this position by noting that the typical supervised financial organization exempt from the requirement of supervised lender's licenses include "commercial banks, saving banks, saving and loan associations, and credit unions" - all of which are chartered or organized to receive deposits. The typical supervised lender is authorized only to make loans through its supervised lender license and has no other authority to establish deposit accounts.

The opinion expressed herein is consistent with our long standing enforcement policy set forth in a January 23, 1985 opinion letter of prior UCCC Administrator Martin Stuber entitled "Subsidiaries of Federal Associations" (copy enclosed).

This office currently licenses a number of finance company subsidiaries of both Colorado chartered and national banks. In addition, I would assume that any other activities in which the subsidiary engages, such as the sale of securities or the sale of insurance, would require the subsidiary to obtain the requisite state license, permit, or registration from the Colorado Security Commissioner/Division of Securities and the Colorado Insurance Commissioner/Division of Insurance.

For these reasons, it is my opinion that your client's Lending Company subsidiary, which itself is not chartered to take deposits, must obtain a Colorado supervised lender's license in order to make or take assignment of Colorado supervised loans with an annual percentage rate in excess of 12% per annum.¹ Please be aware that should a lender regularly make supervised loans without first obtaining a supervised lender's license, the debtors are not obligated to pay any finance charge and may be entitled to civil penalties. Section 5-5-202, C.R.S.

Sincerely,



LAURA E. UDIS
Administrator
Uniform Consumer Credit Code
(303) 866-4494
(303) 866-5691 (FAX)

¹ Your letter states that the Lending Company will purchase consumer paper. If the consumer paper is limited solely to Colorado retail installment contracts (credit sales), the Lending Company would need to file UCCC notification and the applicable notification and volume fees required by §§ 5-6-201 through 5-6-203, C.R.S. If, however, the Lending Company makes or takes assignment of Colorado supervised loans, a supervised lender's license is required.