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## Department of Justice

CONSUMER PROTECTION DIVISION

October 8, 1990

RE: Opinion of Iowa House File 677

Dear

Your letter of July 18, 1990 has been referred to me for response. You have raised three questions concerning HF677. (Throughout this letter I will reference HF677 under its new Code Section 535.17.) This response is being provided pursuant to Iowa Code Section 537.6104 (1)(d) and 61 Iowa Admin. Code Section 10.4 as an informal advisory letter and does not constitute a formal opinion of either the Attorney General or the Administrator of the Consumer Credit Code.

The first question you raised is whether the notice provided in Section 535.17 (3) can be included in consumer credit transactions for personal, family or household purposes where the credit extended is twenty thousand dollars or less. As you note, Section 535.17 (8) states that Section 535.17 (3), which would include the notice, is not applicable to credit transactions under these circumstances. It is our position that the legislature's exclusion of these transactions mean that it did not intend to allow creditors to impose these terms on consumer credit transactions where the credit extended is twenty thousand or less. Furthermore, to include this language in the credit agreement would be unconscionable (see Iowa Code Section 537.5108 (1989)) and an unfair and deceptive trade practice in violation of Iowa Code Section 714.16 (2)(a) (1989). The creditor or the creditor's agent is in the best position to know whether terms or oral promises that are made to the debtor are not contained or are inconsistent with the provisions of the written contract. It is inherently unfair to allow the creditor or the creditor's agent to take advantage of the debtor by making

promises that the debtor may rely upon and then later use the written contract as a shield against performance of those promises. Under the circumstances, the debtor is entitled to rely upon the representation and promises of the creditor and the creditor's agent.

Our answer to your first question also answers your second question. The notice at issue here would not be enforceable under the circumstances you posit in your first question. Furthermore, since it is not enforceable, even including it in the credit agreement would be a violation of the Consumer Credit Code and the Consumer Fraud Act because it could mislead consumers as to their legal rights.

With regard to your third question, our advice is limited to consumer credit transactions where the amount is more than twenty thousand dollars but less than twenty-five thousand dollars. We do not have authority under the provisions cited above to issue any advice concerning non-consumer credit transactions.

The question you posit is whether "the notice [Section 535.17 (3)] could be given with the same statutory effect to the guarantors or similar third parties to "credit agreements." Assuming that there is "contract", Section 535.17 (5)(b) which is a "credit agreement", see Section 535.17 (5)(c), then that applicable sections are 535.17 (1) and (2) which provides that a "credit agreement", or a "modification of a credit agreement" is not enforceable by way of action or defense "by any party." This would include guarantors or similar third parties.

Sincerely,

RICHARD L. CLELAND  
Assistant Attorney General

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