

September 22, 1992

John McKechnie, III
Director
Credit Union Legislative Action Council
805 15th Street, NW
Suite 300
Washington, DC 20005-2207

Re: Political Action Committee ("PAC") Activities (Your Letter of September 4, 1992)

Dear Mr. McKechnie:

You requested an opinion regarding whether a federal credit union ("FCU") "may collect funds from its members for the Credit Union Legislative Action Council ("CULAC") and/or a state credit union league ("State League") PAC, and in exchange, provide the contributor with a candy bar under the FCU's incidental powers." We have been informed by the Federal Election Commission ("FEC") that this proposal is not permissible without you first obtaining an FEC advisory opinion. Therefore, your request is moot until we are provided with an advisory opinion from the FEC that your proposal is permissible, and reapplication is made to us regarding this issue.

BACKGROUND

Your letter states that CULAC would like to endorse fundraising programs in which the State League would provide a supply of candy bars, at no cost to the FCU, which the State League would obtain from major candy companies on a consignment basis. The FCU would distribute the candy bars only to members who contribute to CULAC or to a State League's PAC. The FCU would collect such contributions and forward all of the contributions to CULAC or the State League's PAC. The FCU would retain none of the contributions collected.

ANALYSIS

You state that you are not seeking a NCUA opinion concerning the legality of your proposal under the Federal Election Campaign Act "as [the proposal is] in full compliance with that law and implementing regulations." The Federal Election Commission did not confirm your belief upon an informal inquiry from this Office. Instead, FEC staff were of the opinion that the proposal did not comply with the Federal Election Campaign Act or regulations, and suggested that you write to them for an advisory opinion regarding the permissibility of your proposal.

Given that the proposal does not conform to other applicable federal law, NCUA does not need to reach the question of whether the proposal would be permissible as a proper incidental activity of FCUs. If you receive an FEC advisory opinion finding that your proposal is permissible, you may reapply to the NCUA for a determination that the proposal would be a valid exercise of an FCU's incidental authority.

In any reapplication, you should bear in mind the showing that must be made for an activity to be a proper subject of an FCUs incidental authority. FCUs have authority "to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated." 12 U.S.C. ~1757(17). In *Arnold Tours, Inc. v. Camp*, 472 F.2d 427 (1st Cir. 1972), a court defined incidental powers for national banks as:

[an activity] that is convenient or useful in connection with the performance of one of the bank's established activities under the National Bank Act. If this connection between an incidental activity, and an express power does not exist, the activity is not authorized as an incidental power. 472 F.2d 427, 432.

In *American Bankers Association v. Connell*, 447 F.Supp. 296 (D.D.C. 1978), the court applied the "convenient or useful" test of incidental powers to FCUs. Therefore, in order for an activity to be incidental it must be convenient or useful in performing an express power of an FCU. Any reapplication on this proposal should include a discussion of which express power your proposal is incidental to, and of how the proposal is convenient or useful to the exercise of such express authority. Based on what you have given us thusfar, our initial conclusion is that this activity does not meet the incidental powers test.

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MEC:sg
SSIC 3210
92-0908