

March 3, 1993

John J. McKechnie, III
Director, Political Action
Credit Union Legislative Action Council
of Credit Union National Association, Inc.
805 15th Street, NW
Suite 300
Washington, DC 20005 - 2207

Re: Political Action Committee ("PAC") Fund-raising Program

Dear Mr. McKechnie:

You requested that NCUA permit federal credit unions ("FCUs") to collect funds from its members on behalf of a political action committee ("PAC") and in exchange provide the member with an item of nominal value, such as a candy bar. Under the representations made by you in your letter of November 20, 1992, and under the limitations discussed in this letter, NCUA would consider such a program a valid exercise of incidental authority by an FCU. NCUA strongly recommends that FCUs contact either the Federal Election Commission or their own legal counsel before engaging in this program to ensure compliance with applicable election laws.

PROGRAM PROPOSAL

You represent to NCUA the following features of your proposed program. Under your program proposal, state credit union leagues or their PACs or a national trade association's PAC would buy the candy bars (or other items of nominal value), and the candy bars would be provided at no cost to FCUs that had given prior permission to be solicited, as required by Federal Election Commission ("FEC") regulations. The FCU would be provided with a free standing candy dispenser with a collection box for any donations made. Only FCU members who contribute to the league PAC, or directly to the Credit Union Legislative Action Council ("CULAC"), a national trade association's PAC, could receive candy bars, however, the FCU would not be under any duty to ensure this. The FCU would collect the contributions and forward all proceeds to the appropriate PAC. The FCU would not charge for this service, and all proceeds would be forwarded periodically to the appropriate PAC. The FCU would not purchase the candy bars, nor make any solicitations for the PAC from FCU members.

ANALYSIS

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. In this regard, you state the

following:

A[n FCU's] participation in this program would be a permissible exercise of powers incidental to all of the fundamental, explicit powers under Section 1757 of the [FCU] Act -- such as the authority to make loans to members and accept members' share deposits. Credit unions' involvement in political activities -- such as support of the state league PACs or CULAC through the candy bar program -- is essential to the preservation of credit unions as unique financial institutions.

Banks and others that view themselves as competitors of [FCUs] routinely lobby Congress to change the nature of credit unions and restrict their ability to serve the borrowing and saving needs of their members. In addition to counterbalancing anti-credit union lobbies, credit unions must also be politically active since Congress regularly considers consumer protection measures that impact on credit union operations. It is imperative that a political climate exists on Capitol Hill that does not jeopardize the future of credit unions and their ability to exercise express powers under the FCU Act. One of the most effective ways to achieve such an atmosphere in Congress is to help elect, through campaign contributions and grassroots involvement, candidates who understand the importance of credit unions in the financial marketplace. Collecting contributions for CULAC or a state league PAC from members through programs that are legal under the FEC Act, such as the candy bar program, is unquestionably useful for a[n FCU] (under the ABA v. Connell standard) and is an activity that clearly is an incidental power.

To reinforce our argument that political action is a fundamental, if not explicit, power for [FCUs], we note that it is a permissible exercise of incidental powers for a[n FCU] to belong to a trade association, whose key role is to help ensure the passage of favorable legislation and defeat detrimental proposals. Organizing and maintaining a PAC to pool resources of individuals to elect candidates who support credit unions are necessary and legitimate functions of a trade association. If a credit union is able to pay dues to a trade association which supports candidates through a PAC, it should be able to participate in specific fundraising programs permitted under the FEC Act, including the candy bar program outlined in this letter. Letter, pp. 2-3.

NCUA finds your appeal persuasive and well reasoned. However, NCUA has no authority to interpret or enforce election laws. Therefore, since NCUA has a responsibility to ensure that no FCUs violate any applicable laws, NCUA urges FCUs to consult with their own legal counsel regarding participation in this program before engaging in it. Furthermore, as stated in the preamble to the analogous NCUA Interpretive Ruling and Policy Statement No. 79-6 ("IRPS No. 79-6"): (1) Article VIII, Section 8, of the [FCU] Bylaws, requires that the minutes of the board of directors' meeting at which participation in such a program is authorized shall reflect the extent and nature of such participation; and (2) Article XIX, Section 4, of the [FCU] Bylaws, concerning conflicts of interest by officials and employees of an FCU, is applicable to the activities covered in this opinion. (FCU officials involved with any credit union PAC should recuse themselves from consideration of their FCU's participation in this program once presented to the FCU's board. We do not believe that an FCU official whose only involvement with a PAC is a financial contribution would normally necessitate recusal. However, serving on a PAC in any official capacity would necessitate recusal.) See IRPS No. 79-6, 44 Fed.Reg. 56691 (October 2, 1979) (enclosed). Under these conditions, and in accord with the representations made by CULAC as stated in this opinion, FCUs may engage in your proposed program as a legitimate exercise of incidental authority.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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