

December 2, 1996

William F. Gingerella, Jr.  
Director of Audit & Compliance  
First Citizens' Federal Credit Union  
271 Union St.  
New Bedford, MA 02740

Re: Section 701.21(c)(8) of the NCUA Rules and Regulations  
(Your Letter of October 4, 1996)

Dear Mr. Gingerella:

You state that the credit union hired an attorney to defend it in a lawsuit brought by a borrower. The credit union approved a mortgage with the requirement of a pest inspection being completed prior to closing. The borrower waived the inspection, but ultimately claimed that there was termite damage. The mortgage was never a collection problem. The case was decided in favor of the credit union. The work on the case was performed from October 15, 1992, through October 23, 1995. A bill for the work was prepared in January 1996 and submitted in March, June, July, and September of that year. At the time he performed the work, the attorney was a member of the credit union's board of directors.

You reference an opinion letter from this office which concludes that under Section 701.21(c)(8) of the NCUA Rules and Regulations, a credit union attorney who also serves as a director "cannot generate any fees relative to collections on bad loans." You state that during an exam in early 1996, an NCUA examiner stated "in passing" that paying the bill would be impermissible. You have asked whether payment of the bill would violate Section 701.21(c)(8).

#### Analysis

The opinion letter to which you refer is from 1992, when the language of Section 701.21(c)(8) was, in relevant part, as follows:

A federal credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this Section.

This prohibition was applicable to state-chartered credit unions through the insurance provisions of Part 741 of the Regulations. As the letter stated, the regulation would prohibit an outside attorney who served as a director from receiving any compensation for collecting a loan for an FCU. We do not think that the work at issue constitutes collecting a loan, however, as the borrower apparently was not delinquent or in default. Clearly, the work does not constitute any of the other prohibited activities. Accordingly, payment of the bill would not violate Section 701.21(c)(8).

As a final matter, we believe that the bill should be paid regardless of Section 701.21(c)(8). The credit union entered into an agreement to pay an individual to perform certain services. Once the services were performed, the credit union was legally obligated to render payment. The prospect of a regulatory violation does not nullify the agreement. Further, it would not constitute a valid defense to any lawsuit brought by the attorney. The potential regulatory violation is a matter between the credit union and NCUA (or the state

regulator); it does not involve the attorney.

Sincerely,

Michael J. McKenna  
Acting Associate General Counsel

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