

September 1, 1998

Thomas R. Folk, Esquire
Hazel & Thomas
3110 Fairview Park Drive
Suite 1400, P.O. Box 12001
Falls Church, Virginia 22042

Re: Interpretation of Article XIX, Section 4 of the FCU Bylaws,
Your letter dated July 10, 1998.

Dear Mr. Folk:

You have asked whether the Federal Credit Union Bylaws (FCU Bylaws) prohibit a federal credit union (FCU) director from being employed by a company that offers products similar to products being offered by the FCU. As explained below, the bylaws do not prohibit this form of dual service but there are other legal concerns that must be addressed.

You have advised that an FCU director is currently the comptroller of an association that offers its members certain services through outside vendors. These services include life and health insurance and financial products through a bank. The association receives compensation from the bank and insurance companies in proportion to the number of members who utilize the services. The FCU's field of membership substantially overlaps the association's membership. The FCU provides many of the same services offered by the association either directly or through a credit union service organization. These services include: deposit products; annuities; medical supplemental insurance; credit cards; group life insurance; relocation services; and educational assistance such as loans. By offering many of the same products to their overlapping memberships, the FCU and the association are in direct competition.

Article XIX, Section 4 of the FCU Bylaws prohibits a director from participating in any manner in the deliberation upon or the determination of any question affecting the pecuniary interest of any association in which he is directly or indirectly interested. Under this provision, if any of the matters the board is deliberating on affect the pecuniary interest of the association, than the director should recuse himself from the deliberations. This would need to be addressed on a case-by-case basis.

Mr. Thomas R. Folk, Esquire

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We are aware of no other FCU bylaw, regulation or statute that prohibits this form of dual service. Although not a violation of law, we caution that the individual must be careful not to breach his fiduciary duty to the credit union. This may be difficult given the fact that the two entities are in direct competition.

Sincerely,

Sheila A. Albin
Associate General Counsel

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