

July 30, 2003

Mr. Dino Joseph Drudi
(b)6

Re: Secrecy of Member Ballot in Federal Credit Union Elections.

Dear Mr. Drudi:

You have asked if it is permissible under the Federal Credit Union (FCU) Bylaws for an FCU to require its members' signatures on their annual election ballot. We believe the FCU Bylaws require a secret ballot and that a member's signature on the ballot destroys the secrecy.

You have explained that your FCU's election procedures this year, for the first time, requires the members to sign their names on the ballot and then submit the ballot to an independent auditing firm to be tallied. In the past, the FCU provided each member with a ballot and a separate identification form that was submitted at the same time with the ballot but removed from the mailing envelope before opening the ballot. The procedure allowed the FCU to verify the identity of the voter while maintaining the secrecy of the ballot. The FCU advised you by e-mail dated April 25, 2003, that, because the signed ballot is only seen by an independent auditing firm and not by any member or employee of the FCU, "it remains a secret ballot."

The current and former versions of the FCU Bylaws, as well as ROBERT'S RULES OF ORDER, support the interpretation that an FCU's balloting process must remain secret. ROBERT'S RULES OF ORDER states that "[e]lection by ballot is preferable, as the ballot allows the members to vote in secrecy." ROBERT'S RULES OF ORDER 172 (1983). Our conclusion is also supported by NCUA's prior sample instructions for a sample mail ballot. Those instructions provided:

Sign the voter identification form and enter your credit union account number. The ID form will be separated from your ballot when it reaches the credit union, and before any ballots are opened.

Federal Credit Union Standard Bylaw Amendments and Guidelines, Sample Ballot, p. 41, October 1991 (emphasis added).

The FCU Bylaws state that, if one form is used, it must be "properly designed." FCU Bylaws, Article V, Option A4, Section 2(d)(5). We interpret this to mean that the ballot must remain secret. The next section in the bylaws also support the conclusion by requiring the election teller, in the case of disputed identification forms, "to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved." Id. at Section 2(d)(6) (emphasis added).

The FCU appears to concede that the intent of the ballot process is secrecy. The FCU maintains that, because only an independent auditing firm is viewing the ballots, they are secret even if members are required to put their names on the ballot. We do not agree. Secrecy in voting is interpreted to mean that "the elector may conceal from every person the name of the candidate for whom he voted." 29 C.J.S. Elections §1(1) (1965). Maintaining actual secrecy is important for two reasons. First, if the members believe the balloting process is susceptible to a breach in the secrecy, this may have a chilling effect on the voting process. Second, a process that allows tellers, even if they are independent, to know both the identity of the voters and how the voters have cast their ballots is susceptible to a breach in the secrecy.

Finally, we note NCUA's longstanding policy is not to become involved in election or bylaw disputes unless the alleged violation poses a safety and soundness concern to the FCU or is a violation of the FCU Act or NCUA regulations. This is discussed in the Office of General Counsel legal opinion 03-0106, dated February 6, 2003, available on the agency's website, www.ncua.gov. You may wish to raise your concerns and share this legal opinion with your board of directors or supervisory committee but we suggest you consult with your own local, legal counsel if you wish to pursue other legal remedies.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR:bhs
03-0510