

LS/HMU:cch

3700

2/21/84

FROM: Department of Legal Services

[]

[]

REF : (a) Memo [] dated 2/1/84; same subj., with enclosures

1. The following is our response to Reference (a) concerning the propriety of a member of the board of directors withholding information that would assist the FCU in Enforcing a judgment on a delinquent member.

2. It is the opinion of this Office that a member of the directors of an FCU serves in a fiduciary capacity. An analogy can be made to the board of directors of any other type of corporation. It is well established that directors and officers of a corporation occupy a fiduciary, or more exactly, quasi-fiduciary, relation to the corporation and its stockholders. They are required to act in the utmost good faith and in accepting the office they impliedly undertake to give to the enterprise the benefit of their care and best judgment and exercise the powers conferred solely in the interest of the corporation or the stockholders as a body or corporate entity, and not for their own personal interests.

3. From the enclosures submitted with Reference (a) [] may be breaching his fiduciary duties as the treasurer and a director of the FCU by failing to give information on the whereabouts of his [], against whom the FCU has an outstanding judgment. However, we are not in a position to determine whether or not there has been a breach of fiduciary duty. This is a matter of state or Federal common law. The decision would go up to a judge hearing the case. Section 206(g)(1) of the FCU Act, 12 U.S.C. §1786(g)(1), authorizes the NCUA Board to remove a director or officer from office due to his/her breach of a fiduciary duty. However, we do not believe this to be an appropriate case for administrative action so we need not make a determination as to whether a breach of fiduciary duty, in fact, has occurred.

4. One option that the FCU may wish to invoke is the removal of [], as treasurer and director of the FCU. The Bylaws provide for two methods of removal of a director: 1) by the board of directors (see Art. VII, §7 of the bylaws); and 2) by a special meeting of the members (see Art X, §§5 & 6 and Art. XIX, §3 of the bylaws). According to Article VII, §7 of the bylaws, a director's office may be declared vacant if that director fails to perform any of the duties devolving upon him or her as a director. If the board of directors of the FCU determines that [] has breached his fiduciary duty as a director, he may be removed from office in accordance with Article VII, §7. The vacancy on the board shall be filled in accordance with Article VII, §3 of the bylaws. The second alternative for removal of a director is to call a special meeting of the members for that purpose under Article XIX, §3 of the bylaws.

5. Please advise accordingly.

TODD A. OKUN

Assistant General Counsel

cc: All Regional Directors