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FROM: Assistant General Counsel  
Steven R. Bisker

SUBJ: Board of Directors' Eligibility Requirements

DATE: November 4, 1986

This is in response to your memorandum of April 29, 1986, concerning the above noted subject. It is your position that, if certain circumstances exist, a nonstandard bylaw amendment imposing a limitation on who can serve on the FCU's board of directors (e.g., active employee at a given location or holding a valid security clearance) should be approved.

It has been our position, as expressed in prior legal opinions, and Agency policy, that the only eligibility requirements to serve on the board of directors of an FCU are those imposed by the FCU Act, specifically Section 111. Section 111 of the FCU Act requires that the board of directors be composed of credit union members. We have stated that mere membership in the FCU entitles a member to have the opportunity to become a director.

Article VI, Section 7 of the Standard FCU Bylaws provides the only recognized, qualifying requirement- -a minimum age requirement - - to hold elected or appointed office (to be established by an FCU board, but cannot be greater than age sixteen). A standard bylaw amendment to Article VI, Section 7 increases the minimum age to no greater than eighteen. Further, we recently opined that the minimum age could legally be raise to twenty one (through approval of a nonstandard amendment). (See attached memo.) The reasons for the minimum age requirement (maturity, intellectual ability, legal authority to sign binding contracts, etc.) are somewhat unique and, therefore, are distinguishable, in our opinion, from all other types of eligibility requirements.

As you know, we sent a memorandum to all of the Regional Directors requesting their opinion on the approval/disapproval of nonstandard bylaw amendments affecting board of director eligibility. Four of the Regional Directors agreed that nonstandard bylaw amendments that place restrictions on eligibility should not be approved. The other Regional Director [ ] believed that a limitation involving some allocation who can serve on the board, based on the make-up of the membership, was appropriate.

Your reason in support of limiting eligibility to employees at a certain location is that control and management of the credit union's affairs can best be accomplished by a board of directors composed of persons who can actively participate in the decision making process which takes place at board meetings. We believe that your stated goal can be obtained without limiting eligibility (e.g., to only those members employed at a specific location). A standard amendment to Article VII, Section 4 of the FCU Bylaws permits conference telephone call meetings to replace regular meetings of the board of directors. The purpose of this amendment is to permit greater participation of members in the management of the credit union where the field of membership includes persons not in the same general locality. (See Letter to Credit Unions No. 56.) It is our opinion that this amendment may accomplish a credit union's needs without imposing limitations on who can run for the board of directors. In addition, Article VII, Section 7 of the standard bylaws allows the board of directors to declare a director's Position vacant for failure to attend three consecutive meetings or failure to otherwise fulfill the duties of office. An FCU has this option available to it to rectify situations where a director fails to properly participate in managing the credit union.

There is one further alternative to the proposed bylaw amendment. We have previously stated that an FCU nominating committee or board of directors is free to set reasonable standards as to whom it will nominate to run for office. (See attached letter that sets forth this policy.) Therefore, it would be possible for an FCU's -board or nominating committee to establish the eligibility requirement here in issue. Although a member may not be nominated by the nominating committee, he/she would still be-eligible to be nominated by petition or from the floor, as provided by the FCU's bylaws. Since such individuals are not absolutely foreclosed from running for office, we therefore do not view

eligibility requirements established by a nominating committee to be in conflict with Section 111 of the Act.

Based on Regional response, our prior opinions, and the general Agency position on the issue, we recommend that the proposed amendment not be approved.

If further questions arise, please contact Hattie Ulan of this Office.

Attachments

cc: All RD's  
E & I