

GC/MM:sg

SSIC 3701

89-0515

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FROM: Assistant General Counsel

Hattie M. Ulan

SUBJECT: Nonstandard Bylaw Amendment of []

(Your May 8, 1989, Memo)

DATE: June 29, 1989

You have asked that we comment on a proposed nonstandard bylaw amendment to Article VI, Section 1, submitted by the [] ("FCU"), which would allow the board of directors to approve or amend the slate of candidates presented by the nominating committee for election at the annual meeting. The proposed nonstandard bylaw amendment should not be approved without considerable revision.

BACKGROUND

[] submitted a nonstandard bylaw amendment to-you which would allow the board of directors to approve or amend the slate of candidates presented by the nominating committee for election at the annual meeting. The FCU wants this amendment to ensure greater flexibility by the board of directors in proposing qualified candidates to the membership. Although you are prepared to recommend approval of the request, you have reservations as to the legality of the proposed amendment.

ANALYSIS

The proposed nonstandard bylaw amendment would allow the board of directors unrestricted freedom to amend the nominating committee's recommendations and to present to the membership candidates palatable to the board. The proposed amendment may not be strictly illegal; however, there are at least three problems with its approach. First, the board is not restricted in any appreciable way in its power to amend the slate. As presently written, the board could amend the slate for legitimate reasons or for purely personal reasons (i.e., because they just do not like the nominee). This presents the danger of existing board members using the amendment process as an attempt to perpetuate their own positions or limit board membership to their own clique. Although nominations may be made by petition of the members, this procedure does not adequately safeguard the danger presented by a board's unfettered discretion to amend the slate of nominees. Second, a distinct and clear basis for amendment by the board of directors must be made part of the bylaw, i.e., the nominee is underage, convicted of a crime involving dishonesty, or any other legitimate and discernible reason. Third, a mechanism is necessary for the amendment process. How will the board approve or amend the slate? Will it be by two-thirds or majority vote of the board to amend the slate? When will the board decide? Will the board be able to add people to the slate? Under what criteria?

Therefore, we recommend that the proposed nonstandard bylaw amendment be returned to the FCU so that they can address these concerns and propose a revised nonstandard bylaw amendment.