

GC/JT:sg

SSIC 6100

89-1122

[]

FROM: Associate General Counsel

Hattie M. Ulan

SUBJ: Proposed Nonstandard Bylaw Amendments of []

(Your November 14, 1989, Memo)

DATE: December 26, 1989

You have asked for our comments on the above-referenced FCU's request for two nonstandard bylaw amendments. The first proposed nonstandard bylaw amendment would increase the number of members needed to constitute a quorum at a special meeting of members to fifty percent of the number of members required to request the special meeting. There is no legal objection to granting this amendment. The second proposed bylaw amendment would eliminate the right of FCU members to dismiss FCU employees. We have no objection to granting this amendment. This letter is a follow-up to a staff attorney's DVX to [].

ANALYSIS

The first proposed nonstandard bylaw amendment would increase the number of members needed to constitute a quorum at special meetings to fifty percent of the number of members required to request the special meeting. Article V, Section 5 of the FCU Standard Bylaws provides:

Except as hereinafter provided, at annual or special meetings, 15 members shall constitute a quorum. If no quorum is present, an adjournment may be taken to a date not fewer than 7 nor more than 14 days thereafter; and the members present at any such adjourned meeting shall constitute a quorum, regardless of the number of members present. The same notice shall be given for the adjourned meeting as is prescribed in section 2 of this article for the original meeting, except that such notice shall be given not fewer than 5 days previous to the date of the meeting as fixed in the adjournment.

The proposed bylaw amendment deletes the reference to special meetings and adds the following sentence: "At special meetings, 50 percent of the number of members required to request such a meeting must be present to constitute a quorum." There is nothing in the FCU Act or the NCUA's Rules and Regulations that prohibits this percentage. This percentage may present some policy cerns. However, as presently constituted, there is no legal objection to this amendment. We defer to your judgment on whether it should be granted.

The second proposed bylaw amendment would eliminate the right of FCU members to dismiss FCU employees. Article XIX, Section 3 of the FCU Standard Bylaws provides:

Notwithstanding any other provisions in these bylaws, any director, committee member, officer, or employee of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given to him to be heard.

The proposed bylaw amendment deletes the reference to officers and employees, limiting the right of members to dismiss only the board and committee members. Neither the FCU Act nor NCUA's Rules and Regulations provide members with the authority to remove FCU employees. Under general principles of corporate law, it is the party that has the authority to hire that also has the authority to terminate employment. We have no legal objection to this

proposed amendment. We defer to your judgment on whether it should be granted.