

GC/MM:sg

SSIC 3701

90-0336

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment of []

(Your March 12, 1990, Memo)

DATE: April 17, 1990

You have asked us for our legal opinion on a proposed bylaw amendment of [] that would prohibit a paid employee from being a candidate for the board of directors.

BACKGROUND

[] is seeking approval of a nonstandard bylaw amendment that would prohibit a paid employee from being a candidate for the board of directors. The FCU believes the proposed amendment will prevent employees from gaining an unfair advantage over nonemployees in campaigning for the Board. The FCU also believes it will prevent FCU employees from campaigning on FCU time.

ANALYSIS

As you are aware, it has long been our position that the only eligibility requirements for FCU board membership are those contained in the FCU Act and the Bylaws. That is, as long as an individual is a member (Section 111 of the FCU Act) and has not been convicted of a crime involving dishonesty or breach of trust (Section 205(d) of the FCU Act), or if they have been convicted of such a crime the NCUA Board has waived the Section 205(d) prohibition, he or she is eligible to be elected as a director. Article VI, Section 7 of the FCU Bylaws also permits the board to establish a minimum age requirement. NCUA has generally not granted nonstandard bylaw amendments in this area.

The amendment sought by the FCU would prohibit all employees from running for the board of directors. This forces an employee to resign before any election, regardless of whether he wins or loses. A standard bylaw amendment to Article VIII, Section 7 permits an FCU to prohibit a director or committee member from being a paid employee of the FCU. NCUA has allowed this amendment since (1) it does not bar an individual from board or committee membership; it simply requires the individual to determine whether he or she wants to be a paid employee or on the board of directors; and (2) it promotes principles of sound internal control. The proposed nonstandard bylaw amendment goes a step further from the standard bylaw amendment by prohibiting employees from even running for the board. In our view, this prohibition is impermissible because it limits eligibility for board membership. If the FCU wants to stop employees from campaigning in the FCU, it can adopt a policy prohibiting or controlling campaigning on the job.

While we do not believe that the FCU should be permitted to adopt this proposed amendment, the FCU's nominating committee may consider the fact that an individual is an employee of the FCU in deciding against including the person as a nominee. This is inherent in the discretion given to the nominating committee by Article VI of the Bylaws.