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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment - Fees on Dormant Accounts

(Your May 17, 1990, Memorandum)

DATE: July 31, 1990

You requested our comments on a nonstandard bylaw amendment proposed [] providing for imposition of fees on dormant accounts. We have no legal objection to the proposed amendment.

[] propose s to amend Article III, Section 5 of its bylaws by adding a new subsection (g). You have made some changes in the proposed bylaw and wish to approve it and to recommend it to [] which has concerns similar to those expressed by [] with regard to dormant accounts. The proposed amendment, with your changes, provides as follows.

(g) The board may, by resolution, impose a service fee or other fees on member accounts as it deems necessary, provided, however, that any such fees are applied uniformly on all members' accounts within the categories established by the board. Members shall be provided notice of any fee schedule approved by the board.

Nothing in the Federal Credit Union Act or NCUA's Rules and Regulations prohibits the proposed amendment. It is our position that FCUs may impose fees on dormant accounts pursuant to Section 701.35(c) of the Regulations which states in part:

A Federal credit union may, consistent with this Section, other Federal law and its contractual obligations, determine the..... fees or charges..... affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

The 1983 memorandum to which you refer was based on research into the common law on the issue of imposition of service fees. Under general common law principles, service fees are legal if (1) the account signature card states that the account is subject to service fees or (2) the account signature card states that the account is subject to regulations and bylaws of the FCU; a bylaw is passed implementing the service fee; and the accountholder is given notice of the service fee. Even in the absence of a statement in the account signature card of the type described above, a court would probably uphold a service fee if the necessary bylaw were in place and accountholders received sufficient notice. As the cited memorandum points out, notice is the most important factor in determining the validity of the imposition of a service fee. Credit unions are better protected when they keep their members better informed.

We caution you again that our opinion on this issue is based only upon a review of general law principles. We offer no opinion as to the effect of Indiana or Michigan contract common law on the proposed amendment. Lakes FCU and Dort FCU should consult local counsel for opinions on the legality of the proposed amendment and any notice or other requirements under contract common law in Indiana and Michigan law, respectively. Both credit unions should also obtain opinions as to the applicability and effect of federal laws other than the Federal Credit Union Act.

Your memorandum does not state whether you intend the service fees to apply retroactively. We wish to point out that retroactive application of service fees would probably not be considered legal.

We have no objection to your suggestion that service fee amounts be set through board resolution rather than included in the bylaw. This is a policy matter on which we defer to your judgment. However, credit unions wishing to impose a

service fee without stating its amount in the bylaw should determine that account holders are given sufficient notice.