

GC/MFR/SAA:bhs
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03-0518

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment

DATE:

You have asked for our concurrence on proposed bylaw amendments to Article V, Sections 2(c)(5) and (d)(8) that would change the time for announcing the election results from “at the annual meeting” to “within three (3) calendar days after the vote is verified, but no later than at the annual meeting.” Federal Credit Union (FCU) Bylaws, Article V, Sections 2(c)(5), (d)(8). The proposed amendment, as currently drafted, would eliminate certain steps in the election process and, therefore, we do not concur. We believe it likely that the FCU can accomplish what appears to be its main goal without any amendment of the bylaws. If the FCU still wants to amend this provision, it will need to address the concerns we discuss below.

The FCU states that it wants to change this provision in the bylaws “to allow the results of elections to be publicized prior to the annual meeting.” The FCU also states: “For the benefit of all candidates, the board would like to make the results public as soon as they are verified.”

It is not necessary for the FCU to change the FCU Bylaws in order to inform candidates of the election results before the announcement of results at an annual meeting. This is discussed in the attached opinion letter, OGC 94-0537, dated July 8, 1994, which concludes that it would not violate the FCU Bylaws but that an FCU should consult state corporate common law and Robert’s Rules of Order to determine the permissibility of the practice.

Our concerns about the proposed amendment are that it fails to address the circumstances of the verification of the vote and how the results are recorded. Comparing the proposed amendment with the language in the FCU Bylaws it would replace highlights the problem.

The proposed amendment reads:

The result [of the membership vote] must be verified prior to the annual meeting and the chair will make the result of the vote public within three (3) calendar days after the vote is verified, but no later than at the annual meeting.

The proposed amendment is intended to replace:

The result [of the membership vote] must be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

The FCU Bylaw provides for verification and the announcement of the results at the annual meeting which means the board of directors and any members attending are present and the transactions become part of the minutes of the meeting. The proposed amendment does not address how the acts of verification and announcement become a part of the official records of the FCU. Because verification does not occur at the annual meeting, it is unclear to whom the tellers make their verification.

Our view is that including the verification and announcement of elections as part of the annual meeting is contemplated by both the FCU Bylaws and the FCU Act. The FCU Bylaws include “elections” in the suggested order of business for the annual meeting and the FCU Act discusses elections in the context of the annual meeting. FCU

Bylaws, Article IV, Section 4(i); 12 U.S.C. §1761b(3). In addition, election guidance provided in the attached question and answer section of the former FCU Standard Bylaw Amendments and Guidelines provides further understanding of how the process is to work. The guidance provides a method for: maintaining a record of the election; having the entire board being informed of the results; and having the chair of the board on behalf of the board convey the results to the membership. “The tellers of election are required to communicate the results of the voting to the president for announcement to the members at the annual meeting. The tellers must certify the count to the secretary for inclusion in the official minutes.” FCU Standard Bylaw Amendments and Guidelines, p. 27, October 1991.

As noted above, the proposed bylaw does not address verification is accomplished or the proper maintenance of minutes of that action. We would consider approving an amendment that allows for the announcement of the results before the annual meeting if those issues were addressed but note that, as discussed in OGC 94-0537, we believe election results should still be announced at the annual meeting.

We recommend denying the bylaw amendment request, advising the FCU that it may be permissible to advise the candidates of the election results before the annual meeting and further advising the FCU that, if it wants to announce the results to the membership before the annual meeting, it should submit a bylaw request addressing the concerns noted above.

Attachments