

GC/MRS:sg

SSIC 3700

91-0903

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: [] Request for Approval of Nonstandard Bylaw Amendment (Your August 28, 1991 Memorandum)

DATE: October 4, 1991

You requested our opinion on a nonstandard bylaw amendment submitted by []. The proposal, which would amend Article XV, Section 2 of [] bylaws, would permit cash disbursements to nonmembers from a corporate member's account. We have no legal objection to the proposal, but suggest one change, discussed below.

Background

[] primary sponsor is the [], []. Although your memorandum does not specifically so state, it is apparent that [] is a member of

[] has requested that [] cash checks issued by [] to its employees. The checks are issued by [] Division of Finance to pay for expenses incurred by [] employees in performing their official duties.

[] has requested the amendment in order to grant it the authority to cash the checks as suggested by []. Under the proposed amendment, [] would allow both member and nonmembers [] employees to "cash" [] checks by making withdrawals from [] account at []. According to one of the attachments to your memorandum, the [] Division of Finance would make a deposit to the [] account at [] would then disburse cash from the [] account, in the amount of checks presented by [] employees.

Analysis

As you note, we stated, in an opinion dated December 21, 1990, that an FCU may both disburse cash in exchange for vouchers issued by a corporate member and "cash" a corporate member's check by making withdrawals from the corporate member's account at the FCU. We based that opinion on a finding that the authority for such activities is incidental to an FCU's authority to receive shares from its members. See Section 107(6) of the FCU Act. The same reasoning applies here.

We pointed out, in the cited opinion, that Article XV, Section 2 of the Standard Bylaw Amendments authorizes only those cash disbursements made in accordance with the Accounting Manual and Section 5050.2.2 of the Accounting Manual limits cash disbursements to: (1) members and joint owners for share and loan transactions; and (2) petty cash transactions. For that reason, we said, an FCU wishing to disburse cash to nonmembers on behalf of members would need to submit a nonstandard bylaw amendment providing for such cash disbursements.

As we noted in the cited opinion, there is no legal impediment to such an amendment. We therefore have no legal objection to the amendment proposed by []. However, we find the language chosen by [] somewhat

confusing. We suggest the following language as an alternative to the last sentence of the proposed amendment.

The Board may also determine by resolution that disbursements may be made in cash from corporate or organizational member accounts to member and nonmember officers, employees and authorized representatives of any such corporate organizational member of this credit union.

We think that this change will eliminate any suggestion that disbursements to members and joint owners may be made other than in accordance with the Accounting Manual, except in the instance specifically authorized by the amended bylaw. Moreover, by requiring a specific board resolution permitting cash disbursements on behalf of [] the change will protect against other corporate members automatically having the same privilege without consideration by [].

We defer to your judgment as to whether the proposed amendment should be granted.

We note that [] and [] propose to enter into an agreement governing the account from which the cash disbursements will be made. [] should have its local counsel review the proposed contract before executing it.