

November 12, 1992

Elizabeth Ann Clark
Staff Attorney
State of Tennessee
Department of Financial Institutions
Fourth Floor, John Sevier Building
500 Charlotte Avenue
Nashville, TN 37243-0705

Re: Expulsion of Members (Your October 13, 1992 Letter)

Dear Ms. Clark:

You requested information on policies concerning member expulsion from a federal credit union (FCU) when a member has declared bankruptcy or otherwise caused a loss to the FCU. The FCU Act and standard NCUA bylaws govern FCUs in this area. Tennessee law governs Tennessee chartered, federally insured credit unions. We do not see a problem with expulsions being handled differently for federally versus Tennessee chartered credit unions.

As you know, member expulsions from FCUs are addressed in Section 118 of the FCU Act (12 U.S.C. 1764). Pursuant to Section 118(b), an FCU board of directors may adopt a policy of expulsion based on nonparticipation in the FCU. Members may be expelled from the FCU without a membership vote once a nonparticipation policy is adopted. Nonparticipation means failure to vote in elections, failure to purchase shares from, obtain a loan from or lend to the FCU. It is our opinion that declaring bankruptcy or otherwise causing the FCU a loss does not constitute nonparticipation pursuant to Section 118(b). (See letters from me to Scott W. Draughon, dated March 29, 1989 and from Timothy P. McCollum to Thomas P. Munley, dated August 22, 1988, enclosed.) In addition, pursuant to Section 118(a) of the FCU Act, a member may be expelled by a two-thirds vote of the membership present at a special meeting after the member has been given an opportunity to be heard.

It appears from the information enclosed with your letter that Tennessee law allows for a more expansive policy on membership expulsions by the board of directors. According to the standard Tennessee credit union bylaws, after notice and an opportunity to be heard, the board of directors may expel a member who has not carried out his obligations to the credit union or who habitually neglects to pay his debts.

State chartered, federally insured credit unions are subject to their state law regarding member expulsions; FCUs are subject to the Federal Credit Union Act. We note that any interpretation of Tennessee law is within your jurisdiction; that is why we have not attempted to answer the questions regarding Tennessee law raised in the enclosure to your letter.

I hope that we have been of assistance.

Sincerely,

Hattie M. Ulan
Associate General Counsel

Enclosures

GC/HMU:sg
SSIC 3600
92-1013