

June 9, 1998

Jan Hesalroad, President/CEO

2960 Diagonal Highway
Boulder, CO 80301

Re: U of C FCU, ATM Services, Your letter dated March 16, 1998.

Dear Ms. Hesalroad:

You have requested a legal opinion on the permissibility of a federal credit union (FCU) offering postage stamps to nonmembers through ATMs. As explained below, this is not a permissible expansion of an FCU's incidental powers.

Section 107 of the Federal Credit Union Act (the Act) states that an FCU may engage in activities that are either expressly authorized by the Act or, pursuant to the "incidental powers clause," activities that are incidental to one of the express powers. 12 U.S.C. §1757. The "incidental powers clause" permits an FCU "to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated." 12 U.S.C. §1757(17). The "incidental powers" authority includes the power to do that which is "convenient or useful" in connection with the performance of one of the bank's established activities pursuant to its express powers under the National Bank Act." Arnold Tours, Inc. v. Camp, 472 F. 2d 427 (1st Cir. 1972); See also American Bankers Association v. Connell, 447 F. Supp. 296 (D.D.C. 1978)(made the "convenient and useful" test of Arnold Tours applicable to FCUs).

Under both federal statute and case law, an FCU may own, operate and provide ATM services to its members as a "convenient and useful" activity in connection with the performance of express powers such as lending and receiving payments on shares. We have also allowed FCUs to provide ATM services to nonmembers where it is "necessary or requisite" to the FCU's ability to provide such service to its own members. For example, an FCU can allow nonmembers to use its ATM in order to assure that its own members will have access through ATMs of other institutions in the network. That is not the case here.

Ms. Jan Hesalroad

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The July 1990 letter referenced in your incoming, explains that the sale of postage stamps is only permitted as a "goodwill service" and only to members.

Sincerely,

Sheila A. Albin

GC/MFR:bhs
SSIC 3800

98-0409

cc: Region V