

December 29, 1998

C. Stephen Trimmier, Esquire
Trimmier Law Firm
P.O. Box 1885
Birmingham, Alabama 35201

Re: Removal of Directors by Members.

Dear Mr. Trimmier:

You have written asking for clarification of Article XIX, Section 3 of the Federal Credit Union (FCU) Bylaws regarding the removal of directors from office by the members pursuant to a special meeting. Specifically, you ask for guidance on or examples of legally sufficient reasons for members to remove a director. As discussed below, the FCU Bylaws set out certain procedural requirements but do not require that members have "legally sufficient reasons" for removal. The Office of General Counsel has issued its opinion regarding setting aside an election and, in that context, stated that the members must have sufficient justification to set aside an election.

The FCU Bylaws set out the legal requirements for removal of a director by the membership. Article XIX, Section 3 provides that members may remove a director by an affirmative vote at a special meeting called specifically for the purpose of removal but only after the director has an opportunity to be heard. Article V, Sections 2 and 3 require that the executive officer call a special meeting if the required number of members request one, that the notice of the special meeting state the purpose for which it is called, and that no other business be transacted at the special meeting.

When read together, these bylaw provisions require that a members' petition for removal: state that the members are requesting a special meeting to vote on removal; identify the directors whose removal the members are seeking; and specify the reasons for removal. This information is necessary for the directors to have an opportunity to prepare a response prior to the vote. The notice of special meeting that is sent to members must also state the purpose of the meeting, identify the directors whose removal is sought, and specify the reasons for removal.

It is important to distinguish between a petition to remove directors and a petition to set aside an election. I am unaware of any General Counsel opinion stating that the members must have legally sufficient reasons to remove a director. The attached letters from James J. Engel to Lydia Schneider, dated January 19,

1. Stephen Trimmier, Esq.

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1979, and from Hattie M. Ulan to Robert Bascom, dated September 28, 1989, discuss removal of directors by the members. In one case, the grounds discussed were bankruptcy and, in the other, although the grounds were not stated, the vote for removal was allowed to proceed because the charges were so serious and the board members were willing to proceed.

Regarding setting aside an election, I note two previous letters for your attention. The attached letter from Hattie M. Ulan to Duke Strosser, dated September 16, 1991, states that the members must have legally sufficient reasons to set aside an election. That letter is consistent with the attached letter from John Ostby to D.J. O'Brien, dated June 11, 1980.

I also note that the Model Business Corporation Act allows shareholders to remove directors with or without cause, unless the articles of incorporation provide that directors may only be removed for cause. Model Business Corporation Act (1984), §8.08. Unlike removal of directors, there is no specific authority in the FCU Bylaws and no specific authority in corporate law for the membership to void an election without cause.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR:bhs
SSIC 3700
98-0950
Enclosures

cc: Region III