

April 13, 1999

George Trosper, President
Amoco Production Federal Credit Union
P.O. Box 1033
Ulysses, Kansas 67880

Re: Conflict of Interest.

Dear Mr. Trosper:

You have asked for a legal opinion on two separate issues concerning loan processing on behalf of a third party lender.

First, you ask whether it is permissible for a federal credit union (FCU) and its manager to be paid a fee for processing loan applications for a third party mortgage company. The FCU does not itself offer real estate loans and regards this as a service to its members. The third party mortgage company pays a fee that is split between the FCU and the manager, respectively 75% and 25%. As explained in the attached letter from Michael J. McKenna to Tony Launi, dated February 6, 1997, an FCU is not authorized to engage in mortgage referral services such as you have described.

This letter also explains that an FCU that wants to provide a mortgage referral service can offer its members the services of an independent vendor but payment to the FCU is limited to the "cost amount". "Cost amount" is "the total of the direct and indirect costs" for any administrative functions. 12 C.F.R. §721.2(a)(2).

Second, you ask whether it is a potential conflict of interest for an FCU manager to lease space from the FCU to operate her own business processing nonmember loans for a third party mortgage company. The manager would conduct this business at times when the FCU is not open for business. If the business is limited to nonmembers and the lease is an arm's length agreement, NCUA regulations and the Federal Credit Union Act would not prohibit such an arrangement.

You questioned whether there was a potential conflict because the manager receives more money for loans she processes through her own business than she does for loans processed through the FCU. Your question assumed that the mortgage referral services performed by the manager for credit union members was permissible. As discussed above, because we conclude that neither the FCU nor the manager can be compensated directly for a mortgage referral

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service, we do not believe there is an actual conflict of interest if the manager were to operate her own mortgage referral business during off hours.

You have asked for our opinion on the FCU's potential liability as a result of a leasing arrangement with the manager. You noted particularly the potential problem that, in these circumstances, customers of the manager's mortgage referral business might have the perception that the loan processing was being conducted through the FCU. We believe there is a significant, potential problem in these circumstances. The

FCU should seek legal advice from its own legal counsel as to how to limit its liability through, for example, requiring specific disclosures to customers, an indemnification from the manager, and assuring itself that the manager's business would be adequately insured or bonded to address potential claims.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR:bhs
SSIC 3501
98-1147
Enclosure

cc: Tracy Bombarger, Region V