

February 25, 2004

Richard T. Wargo, Jr. Esq.
Sr. Vice President/General Counsel
Pennsylvania Credit Union Association
4309 North Front Street
Harrisburg, Pennsylvania 17106-0007

Re: Charitable Contributions to Credit Unions.

Dear Mr. Wargo:

You have asked if a federal credit union (FCU) may make a donation to another credit union. Yes, our view is that, while NCUA's charitable contributions and donations rule expressly recognizes the permissibility of donations to tax exempt entities under §501(c)(3) of the Internal Revenue Code (IRC) that support credit union development, it does not preclude FCUs from making donations directly to credit unions.

Credit unions have a long tradition of helping credit unions through such means as nonmember deposits, correspondent services, and contributions of staff, equipment and money. NCUA has long recognized an FCU's authority to make charitable contributions and donations under its incidental powers authority. 12 U.S.C. §1757(17); 12 C.F.R. Part 721. Charitable contributions made by FCUs are within their incidental powers because contributions promote name recognition and generate goodwill. NCUA has also specifically recognized an FCU's ability to make donations to other credit unions over the years. In 1979, NCUA interpreted the incidental powers clause of the Federal Credit Union Act to permit FCUs to make reasonable donations to both IRC §501(c)(3) tax exempt entities that operate primarily to promote and develop credit unions and other FCUs. NCUA Interpretive Ruling and Policy Statement (IRPS) No. 79-6, 44 Fed. Reg. 56691 (Oct. 2, 1979).

Several years later, this office issued a legal opinion determining that an FCU could make donations to a credit union conference to provide scholarships to credit union volunteers and officials who otherwise could not afford to attend. OGC Legal Opinion 96-0321, dated March 27, 1996, available on our website. The opinion states:

Such donations are legitimate FCU expenditures, and not charitable donations subject to the limitations of Interpretive Ruling and Policy Statement No. 79-6. 44 Fed.Reg. 56691 (October 2, 1979)(applies to charitable donations to community organizations). Like donations to assist the construction of credit union league and trade association buildings, or donations to assist other credit union conferences, it has long been NCUA's position that such donations are of tangible value to the donor FCU, result in FCU and credit union movement betterment, and are not corporate waste.

The opinion concluded that IRPS 79-6 did not restrict an FCU's ability to make a contribution to the conference on the basis that this activity is within the FCU's incidental powers. We see no distinction between an FCU providing scholarship money to a conference that will pay for a volunteer's attendance and providing the donation directly to the credit union for the same purpose. We believe an FCU has the authority to make a donation directly to another credit union without being subject to the conditions placed in IRPS 79-6 or the charitable contributions and donations rule that replaced it, 12 C.F.R. §701.25.

Consistent with the position articulated in OGC Legal Opinion 96-0321, we believe FCUs may donate staff time, equipment, or money to other credit unions under their incidental powers authority. This activity meets the three-prong incidental powers analysis because these donations are useful in carrying out the mission of credit unions, and, as the functional equivalent of contributions to community nonprofits or nonprofits that promote and develop credit unions, these donations pose the same risks to an FCU based on the appropriateness of the donation for the donor. See 12 C.F.R. §721.2. Like the donation addressed in the 1996 opinion, a donation from an FCU to another credit union is not limited by the conditions in NCUA's charitable donations rule.

Sincerely,

Sheila A. Albin
Associate General Counsel

OGC/CJL:bhs
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